

INITIATIVE 333

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 333 to the Legislature is a true and correct copy as it was received by this office.

1 AN ACT Relating to workers' compensation reform; amending RCW
2 51.08.178, 51.28.040, 51.32.050, 51.32.060, 51.32.072, 51.32.075,
3 51.32.080, 51.32.090, 51.32.095, 51.32.095, 51.36.020, 51.52.132,
4 51.52.120, and 51.52.130; reenacting and amending RCW 51.32.090; adding
5 new sections to chapter 51.08 RCW; adding a new section to chapter
6 51.44 RCW; adding a new section to chapter 51.32 RCW; providing an
7 effective date; providing an expiration date; and declaring an
8 emergency.

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

10 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.08 RCW
11 to read as follows:

12 "Inflation" means the percentage change in the implicit price
13 deflator for personal consumption expenditures for the United States as
14 published for the most recent twelve-month period by the bureau of
15 economic analysis of the federal department of commerce in September of
16 the year before a June 30th determination.

17 **Sec. 2.** RCW 51.08.178 and 1988 c 161 s 12 are each amended to read
18 as follows:

1 (~~(1)~~) For the purposes of this title, the monthly wages the worker
2 was receiving from all employment at the time of injury shall be the
3 basis upon which compensation is computed unless otherwise provided
4 specifically in the statute concerned. In cases where the worker's
5 wages are not fixed by the month, they shall be determined by
6 multiplying the daily wage the worker was receiving at the time of the
7 injury:

8 (a) By five, if the worker was normally employed one day a week;

9 (b) By nine, if the worker was normally employed two days a week;

10 (c) By thirteen, if the worker was normally employed three days a
11 week;

12 (d) By eighteen, if the worker was normally employed four days a
13 week;

14 (e) By twenty-two, if the worker was normally employed five days a
15 week;

16 (f) By twenty-six, if the worker was normally employed six days a
17 week;

18 (g) By thirty, if the worker was normally employed seven days a
19 week.

20 The term "wages" shall include the reasonable value of board,
21 housing, fuel, or other consideration of like nature received from the
22 employer as part of the contract of hire, but shall not include
23 overtime pay except in cases under subsection (2) of this section.
24 However, tips shall also be considered wages only to the extent such
25 tips are reported to the employer for federal income tax purposes. The
26 daily wage shall be the hourly wage multiplied by the number of hours
27 the worker is normally employed. The number of hours the worker is
28 normally employed shall be determined by the department in a fair and
29 reasonable manner, which may include averaging the number of hours
30 worked per day.

31 (2) In cases where (a) the worker's employment is exclusively
32 seasonal in nature or (b) the worker's current employment or his or her
33 relation to his or her employment is essentially part-time or
34 intermittent, the monthly wage shall be determined by dividing by
35 twelve the total wages earned, including overtime, from all employment
36 in any twelve successive calendar months preceding the injury which
37 fairly represent the claimant's employment pattern.

38 (3) If, within the twelve months immediately preceding the injury,
39 the worker has received from the employer at the time of injury a bonus

1 as part of the contract of hire, the average monthly value of such
2 bonus shall be included in determining the worker's monthly wages.

3 (4) In cases where a wage has not been fixed or cannot be
4 reasonably and fairly determined, the monthly wage shall be computed on
5 the basis of the usual wage paid other employees engaged in like or
6 similar occupations where the wages are fixed.) (1)(a) "Wages" means:

7 (i) The gross remuneration paid in cash by the employer to the
8 worker for services performed with respect to a pay period, before any
9 deductions. "Paid in cash" means payment in cash, by check, by
10 electronic transfer, or by other means made directly to the worker; and

11 (ii) Tips only to the extent that the tips are reported to the
12 employer for federal income tax purposes.

13 (b) Wages shall include the actual value of board, housing, and
14 fuel received from the employer as part of the contract of hire. This
15 subsection does not apply during any period in which the employer
16 continues to provide, through a past or current payment, board,
17 housing, and/or fuel that were provided to the employee at the time of
18 the injury or manifestation of occupational disease.

19 (2) Wages does not include: Fringe benefits. "Fringe benefits"
20 are any consideration given to a worker in addition to wages including,
21 but not limited to: Retirement and financial benefit plans of whatever
22 nature; mental and physical health insurance and treatment of whatever
23 nature; life, disability, and wage-replacement insurance of whatever
24 nature; unused, accrued leave of whatever nature; memberships of
25 whatever nature; employee discounts or use or consumption of employer
26 services, materials, equipment, and facilities of whatever nature;
27 training and education of whatever nature; and other employee or
28 beneficiary benefit plan for the employee's or beneficiaries' benefit
29 resulting from the employment relationship.

30 (3) The worker's monthly wage shall be determined by dividing by
31 twelve the total wages earned from all employment, including cash
32 bonuses and overtime pay, in any four successive quarters in the
33 twenty-four months preceding the injury or manifestation of
34 occupational disease that most reasonably represents the worker's
35 wages.

36 (4) In cases where the worker is self-employed or the worker's
37 monthly wage cannot be reasonably determined under subsection (3) of
38 this section due to the worker sustaining an injury or occupational
39 disease less than one year after beginning an employment relationship

1 that both the worker and the employer intend to be continuous and
2 lasting without limit into the foreseeable future, and which provides
3 wages, on an annualized basis, of greater than one hundred fifty
4 percent of wages earned by the worker in the twelve months before
5 beginning such employment, the monthly wage shall be computed on the
6 basis of the usual wage paid other employees of the employer at the
7 time of injury or manifestation of occupational disease who perform
8 like job duties with like work patterns or, if none exist, other
9 employees in the worker's labor market who perform like job duties with
10 like work patterns.

11 (5) In cases where the worker's monthly wage cannot be reasonably
12 determined under subsection (3) of this section because the worker
13 sustained an injury or occupational disease less than one year after
14 beginning an employment relationship that either the worker or the
15 employer do not intend to be continuous and lasting without limit into
16 the foreseeable future, or which provides wages, on an annualized
17 basis, of fifty percent or less of wages earned by the worker in the
18 twelve months before beginning such employment, the monthly wage shall
19 be computed on the basis of the usual wage paid other employees of the
20 employer at the time of injury or manifestation of occupational disease
21 who perform like job duties with like work patterns, or, if none exist,
22 other employees in the worker's labor market who perform like job
23 duties with like work patterns.

24 (6) If the employer or department cannot obtain sufficient accurate
25 information to calculate the worker's wages pursuant to subsection (3)
26 of this section before the first payment of temporary total disability
27 compensation is due, payments may be made provisionally based upon the
28 worker's wages on the date of injury or manifestation of occupational
29 disease.

30 **Sec. 3.** RCW 51.28.040 and 1977 ex.s. c 199 s 1 are each amended to
31 read as follows:

32 ~~((If change of circumstances warrants an increase or rearrangement~~
33 ~~of compensation, like application shall be made therefor.)) Where the~~
34 worker's application to reopen a claim has been granted under RCW
35 51.32.160, compensation and other benefits if in order shall be allowed
36 for periods of time up to sixty days prior to the receipt of such
37 application.

1 **Sec. 4.** RCW 51.32.050 and 1995 c 199 s 6 are each amended to read
2 as follows:

3 (1) Where death results from the injury, the expenses of burial not
4 to exceed two hundred percent of the average monthly wage in the state
5 as defined in RCW 51.08.018 shall be paid.

6 (2)(a) Where death results from the injury, a surviving spouse of
7 a deceased worker eligible for benefits under this title shall receive
8 monthly for life or until remarriage payments according to the
9 following schedule:

10 (i) If there are no children of the deceased worker, sixty percent
11 of the wages of the deceased worker but not less than one hundred
12 eighty-five dollars;

13 (ii) If there is one child of the deceased worker and in the legal
14 custody of such spouse, sixty-two percent of the wages of the deceased
15 worker but not less than two hundred twenty-two dollars;

16 (iii) If there are two children of the deceased worker and in the
17 legal custody of such spouse, sixty-four percent of the wages of the
18 deceased worker but not less than two hundred fifty-three dollars;

19 (iv) If there are three children of the deceased worker and in the
20 legal custody of such spouse, sixty-six percent of the wages of the
21 deceased worker but not less than two hundred seventy-six dollars;

22 (v) If there are four children of the deceased worker and in the
23 legal custody of such spouse, sixty-eight percent of the wages of the
24 deceased worker but not less than two hundred ninety-nine dollars; or

25 (vi) If there are five or more children of the deceased worker and
26 in the legal custody of such spouse, seventy percent of the wages of
27 the deceased worker but not less than three hundred twenty-two dollars.

28 (b) Where the surviving spouse does not have legal custody of any
29 child or children of the deceased worker or where after the death of
30 the worker legal custody of such child or children passes from such
31 surviving spouse to another, any payment on account of such child or
32 children not in the legal custody of the surviving spouse shall be made
33 to the person or persons having legal custody of such child or
34 children. The amount of such payments shall be five percent of the
35 monthly benefits payable as a result of the worker's death for each
36 such child but such payments shall not exceed twenty-five percent.
37 Such payments on account of such child or children shall be subtracted
38 from the amount to which such surviving spouse would have been entitled
39 had such surviving spouse had legal custody of all of the children and

1 the surviving spouse shall receive the remainder after such payments on
2 account of such child or children have been subtracted. Such payments
3 on account of a child or children not in the legal custody of such
4 surviving spouse shall be apportioned equally among such children.

5 (c) Payments to the surviving spouse of the deceased worker shall
6 cease at the end of the month in which remarriage occurs: PROVIDED,
7 That a monthly payment shall be made to the child or children of the
8 deceased worker from the month following such remarriage in a sum equal
9 to five percent of the wages of the deceased worker for one child and
10 a sum equal to five percent for each additional child up to a maximum
11 of five such children. Payments to such child or children shall be
12 apportioned equally among such children. Such sum shall be in place of
13 any payments theretofore made for the benefit of or on account of any
14 such child or children. If the surviving spouse does not have legal
15 custody of any child or children of the deceased worker, or if after
16 the death of the worker, legal custody of such child or children passes
17 from such surviving spouse to another, any payment on account of such
18 child or children not in the legal custody of the surviving spouse
19 shall be made to the person or persons having legal custody of such
20 child or children.

21 (d) (~~In no event shall~~) (i) For claims with date of injury or
22 manifestation of occupational disease before the effective date of this
23 section, the monthly payments provided in subsection (2) of this
24 section may not exceed the applicable percentage of the average monthly
25 wage in the state as computed under RCW 51.08.018 as follows:

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

26 (ii) For claims with date of injury or manifestation of
27 occupational disease on or after July 1, 2003, but before June 30,
28 2006, the monthly payments provided in this subsection may not exceed
29 one hundred twenty percent of the average monthly wage in the state on
30 the effective date of this section. For all claims with the date of
31 injury or manifestation of occupational disease on or after July 1,
32 2006, the monthly payments provided in this subsection may not exceed

1 an amount determined by the department on the effective date of this
2 section, and each June 30th thereafter, and applicable to claims with
3 date of injury or manifestation of occupational disease in the twelve-
4 month period following the June 30th determination. The amount is
5 determined by adjusting the amount on the effective date of this
6 section for inflation on the subsequent June 30th. In subsequent
7 years, the department shall adjust the amount applicable during the
8 previous twelve-month period to account for inflation.

9 (e) In addition to the monthly payments provided for in subsection
10 (2)(a) through (c) of this section, a surviving spouse or child or
11 children of such worker if there is no surviving spouse, or dependent
12 parent or parents, if there is no surviving spouse or child or children
13 of any such deceased worker shall be forthwith paid a sum equal to one
14 hundred percent of the average monthly wage in the state as defined in
15 RCW 51.08.018, any such children, or parents to share and share alike
16 in said sum.

17 (f) Upon remarriage of a surviving spouse the monthly payments for
18 the child or children shall continue as provided in this section, but
19 the monthly payments to such surviving spouse shall cease at the end of
20 the month during which remarriage occurs. However, after September 8,
21 1975, an otherwise eligible surviving spouse of a worker who died at
22 any time prior to or after September 8, 1975, shall have an option of:

23 (i) Receiving, once and for all, a lump sum of twenty-four times
24 the monthly compensation rate in effect on the date of remarriage
25 allocable to the spouse for himself or herself pursuant to subsection
26 (2)(a)(i) of this section and subject to any modifications specified
27 under subsection (2)(d) of this section and RCW 51.32.075(~~(+3)~~) (1)(c)
28 or fifty percent of the then remaining annuity value of his or her
29 pension, whichever is the lesser: PROVIDED, That if the injury
30 occurred prior to July 28, 1991, the remarriage benefit lump sum
31 available shall be as provided in the remarriage benefit schedules then
32 in effect; or

33 (ii) If a surviving spouse does not choose the option specified in
34 subsection (2)(f)(i) of this section to accept the lump sum payment,
35 the remarriage of the surviving spouse of a worker shall not bar him or
36 her from claiming the lump sum payment authorized in subsection
37 (2)(f)(i) of this section during the life of the remarriage, or shall
38 not prevent subsequent monthly payments to him or to her if the
39 remarriage has been terminated by death or has been dissolved or

1 annulled by valid court decree provided he or she has not previously
2 accepted the lump sum payment.

3 (g) If the surviving spouse during the remarriage should die
4 without having previously received the lump sum payment provided in
5 subsection (2)(f)(i) of this section, his or her estate shall be
6 entitled to receive the sum specified under subsection (2)(f)(i) of
7 this section or fifty percent of the then remaining annuity value of
8 his or her pension whichever is the lesser.

9 (h) The effective date of resumption of payments under subsection
10 (2)(f)(ii) of this section to a surviving spouse based upon termination
11 of a remarriage by death, annulment, or dissolution shall be the date
12 of the death or the date the judicial decree of annulment or
13 dissolution becomes final and when application for the payments has
14 been received.

15 (i) If it should be necessary to increase the reserves in the
16 reserve fund or to create a new pension reserve fund as a result of the
17 amendments in chapter 45, Laws of 1975-'76 2nd ex. sess., the amount of
18 such increase in pension reserve in any such case shall be transferred
19 to the reserve fund from the supplemental pension fund.

20 (3) If there is a child or children and no surviving spouse of the
21 deceased worker or the surviving spouse is not eligible for benefits
22 under this title, a sum equal to thirty-five percent of the wages of
23 the deceased worker shall be paid monthly for one child and a sum
24 equivalent to fifteen percent of such wage shall be paid monthly for
25 each additional child, the total of such sum to be divided among such
26 children, share and share alike(~~(:—PROVIDED, That)~~), subject to the
27 following:

28 (a) For claims with date of injury or manifestation of occupational
29 disease before the effective date of this section, benefits under this
30 subsection or subsection (4) of this section shall not exceed the
31 lesser of sixty- five percent of the wages of the deceased worker at
32 the time of his or her death or the applicable percentage of the
33 average monthly wage in the state as defined in RCW 51.08.018, as
34 follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%

June 30, 1995 115%

June 30, 1996 120%

1 (b) For claims with date of injury or manifestation of occupational
2 disease on or after the effective date of this section, but before June
3 30, 2006, the monthly payments provided in this subsection may not
4 exceed one hundred twenty percent of the average monthly wage in the
5 state on the effective date of this section. For all claims with date
6 of injury or manifestation of occupational disease on or after July 1,
7 2006, the monthly payments provided in this subsection may not exceed
8 an amount determined by the department on the effective date of this
9 section, and each June 30th thereafter, and applicable to claims with
10 date of injury or manifestation of occupational disease in the twelve-
11 month period following the June 30th determination. The amount is
12 determined by adjusting the amount on the effective date of this
13 section for inflation on June 30, 2006. In subsequent years, the
14 department shall adjust the amount applicable during the previous
15 twelve-month period to account for inflation.

16 (4) In the event a surviving spouse receiving monthly payments
17 dies, the child or children of the deceased worker shall receive the
18 same payment as provided in subsection (3) of this section.

19 (5)(a) If the worker leaves no surviving spouse or child, but
20 leaves a dependent or dependents, a monthly payment shall be made to
21 each dependent as follows:

22 (i) For claims with date of injury or manifestation of occupational
23 disease before the effective date of this section, the monthly payment
24 shall be equal to fifty percent of the average monthly support actually
25 received by such dependent from the worker during the twelve months
26 next preceding the occurrence of the injury, but the total payment to
27 all dependents in any case shall not exceed the lesser of sixty-five
28 percent of the wages of the deceased worker at the time of his or her
29 death or the applicable percentage of the average monthly wage in the
30 state as defined in RCW 51.08.018 as follows:

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

1 (ii) For claims with date of injury or manifestation of
2 occupational disease on or after the effective date of this section,
3 but before June 30, 2006, the monthly payments provided in this
4 subsection may not exceed one hundred twenty percent of the average
5 monthly wage in the state on the effective date of this section. For
6 all claims with date of injury or manifestation of occupational disease
7 on or after July 1, 2006, the monthly payments provided in this
8 subsection may not exceed an amount determined by the department on the
9 effective date of this section, and each June 30th thereafter, and
10 applicable to claims with date of injury or manifestation of
11 occupational disease occurring in the twelve-month period following the
12 June 30th determination. The amount is determined by adjusting the
13 amount on the effective date of this section for inflation on June 30,
14 2006. In subsequent years, the department shall adjust the amount
15 applicable during the previous twelve-month period to account for
16 inflation.

17 (b) If any dependent is under the age of eighteen years at the time
18 of the occurrence of the injury, the payment to such dependent shall
19 cease when such dependent reaches the age of eighteen years except such
20 payments shall continue until the dependent reaches age twenty-three
21 while permanently enrolled at a full time course in an accredited
22 school. The payment to any dependent shall cease if and when, under
23 the same circumstances, the necessity creating the dependency would
24 have ceased if the injury had not happened.

25 (6) For claims filed prior to July 1, 1986, if the injured worker
26 dies during the period of permanent total disability, whatever the
27 cause of death, leaving a surviving spouse, or child, or children, the
28 surviving spouse or child or children shall receive benefits as if
29 death resulted from the injury as provided in subsections (2) through
30 (4) of this section. Upon remarriage or death of such surviving
31 spouse, the payments to such child or children shall be made as
32 provided in subsection (2) of this section when the surviving spouse of
33 a deceased worker remarries.

34 (7) For claims filed on or after July 1, 1986, every worker who
35 becomes eligible for permanent total disability benefits shall elect an
36 option as provided in RCW 51.32.067.

1 **Sec. 5.** RCW 51.32.060 and 1993 c 521 s 2 are each amended to read
2 as follows:

3 (1) Except as provided in subsection (2) of this section, when the
4 supervisor of industrial insurance (~~shall~~) determines that permanent
5 total disability results from the injury, the worker shall receive
6 monthly during the period of such disability:

7 (a) If married at the time of injury, sixty-five percent of his or
8 her wages but not less than two hundred fifteen dollars per month.

9 (b) If married with one child at the time of injury, sixty-seven
10 percent of his or her wages but not less than two hundred fifty-two
11 dollars per month.

12 (c) If married with two children at the time of injury, sixty-nine
13 percent of his or her wages but not less than two hundred eighty-three
14 dollars.

15 (d) If married with three children at the time of injury,
16 seventy-one percent of his or her wages but not less than three hundred
17 six dollars per month.

18 (e) If married with four children at the time of injury,
19 seventy-three percent of his or her wages but not less than three
20 hundred twenty-nine dollars per month.

21 (f) If married with five or more children at the time of injury,
22 seventy-five percent of his or her wages but not less than three
23 hundred fifty-two dollars per month.

24 (g) If unmarried at the time of the injury, sixty percent of his or
25 her wages but not less than one hundred eighty-five dollars per month.

26 (h) If unmarried with one child at the time of injury, sixty-two
27 percent of his or her wages but not less than two hundred twenty-two
28 dollars per month.

29 (i) If unmarried with two children at the time of injury,
30 sixty-four percent of his or her wages but not less than two hundred
31 fifty-three dollars per month.

32 (j) If unmarried with three children at the time of injury,
33 sixty-six percent of his or her wages but not less than two hundred
34 seventy-six dollars per month.

35 (k) If unmarried with four children at the time of injury,
36 sixty-eight percent of his or her wages but not less than two hundred
37 ninety-nine dollars per month.

1 (1) If unmarried with five or more children at the time of injury,
2 seventy percent of his or her wages but not less than three hundred
3 twenty-two dollars per month.

4 (2) For any claim with date of injury or manifestation of
5 occupational disease on or after the effective date of this section,
6 when the supervisor of industrial insurance determines that permanent
7 total disability results from the injury, the worker shall receive
8 monthly during the period of such disability sixty-six and two-thirds
9 percent of his or her wages as determined under RCW 51.08.178, but not
10 less than two hundred seventy-six dollars per month.

11 (3) 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 under subsection (1)
15 of this section.

16 (~~((3))~~) (4) In case of permanent total disability, if the character
17 of the injury is such as to render the worker so physically helpless as
18 to require the hiring of the services of an attendant, the department
19 shall make monthly payments to such attendant for such services as long
20 as such requirement continues, but such payments shall not obtain or be
21 operative while the worker is receiving care under or pursuant to the
22 provisions of chapter 51.36 RCW and RCW 51.04.105.

23 (~~((4))~~) (5) Should any further accident result in the permanent
24 total disability of an injured worker, he or she shall receive the
25 pension to which he or she would be entitled, notwithstanding the
26 payment of a lump sum for his or her prior injury.

27 (~~((5) In no event shall))~~) (6)(a)(i) For claims filed before the
28 effective date of this section, the monthly payments provided in this
29 section may not exceed the applicable percentage of the average monthly
30 wage in the state as computed under the provisions of RCW 51.08.018 as
31 follows:

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

1 (ii) For claims with date of injury or manifestation of
2 occupational disease on or after the effective date of this section,
3 but before June 30, 2006, the monthly payments provided in this
4 subsection may not exceed one hundred twenty percent of the average
5 monthly wage in the state on the effective date of this section. For
6 all claims with date of injury or manifestation of occupational disease
7 on or after July 1, 2006, the monthly payments provided in this
8 subsection may not exceed an amount determined by the department on the
9 effective date of this section, and each June 30th thereafter, and
10 applicable to claims with date of injury or manifestation of
11 occupational disease occurring in the twelve-month period following the
12 June 30th determination. The amount is determined by adjusting the
13 amount on the effective date of this section for inflation on June 30,
14 2006. In subsequent years, the department shall adjust the amount
15 applicable during the previous twelve-month period to account for
16 inflation.

17 (b) The limitations under this subsection shall not apply to the
18 payments provided for in subsection ((+3+)) (4) of this section.

19 ((+6+)) (7) In the case of new or reopened claims, if the
20 supervisor of industrial insurance determines that, at the time of
21 filing or reopening, the worker is voluntarily retired and is no longer
22 attached to the work force, benefits shall not be paid under this
23 section.

24 ((+7+)) (8) The benefits provided by this section are subject to
25 modification under RCW 51.32.067.

26 **Sec. 6.** RCW 51.32.072 and 1987 c 185 s 34 are each amended to read
27 as follows:

28 (1)(a) Notwithstanding any other provision of law, every surviving
29 spouse and every permanently totally disabled worker or temporarily
30 totally disabled worker, if such worker was unmarried at the time of
31 the worker's injury or was then married but the marriage was later
32 terminated by judicial action, receiving a pension or compensation for
33 temporary total disability under this title pursuant to compensation
34 schedules in effect prior to July 1, 1971, shall after July 1, 1975,
35 and until the effective date of this section be paid fifty percent of
36 the average monthly wage in the state as computed under RCW 51.08.018
37 per month and an amount equal to five percent of such average monthly
38 wage per month to such totally disabled worker if married at the time

1 of the worker's injury and the marriage was not later terminated by
2 judicial action, and an additional two percent of such average monthly
3 wage for each child of such totally disabled worker at the time of
4 injury in the legal custody of such totally disabled worker or such
5 surviving spouse up to a maximum of five such children. The monthly
6 payments such surviving spouse or totally disabled worker are receiving
7 pursuant to compensation schedules in effect prior to July 1, 1971
8 shall be deducted from the monthly payments above specified.

9 (b) Subject to subsection (2) of this section, where such a
10 surviving spouse has remarried, or where any such child of such worker,
11 whether living or deceased, is not in the legal custody of such worker
12 or such surviving spouse there shall be paid for the benefit of and on
13 account of each such child a sum equal to two percent of such average
14 monthly wage up to a maximum of five such children in addition to any
15 payments theretofore paid under compensation schedules in effect prior
16 to July 1, 1971 for the benefit of and on account of each such child.
17 In the case of any child or children of a deceased worker not leaving
18 a surviving spouse or where the surviving spouse has later died, there
19 shall be paid for the benefit of and on account of each such child a
20 sum equal to two percent of such average monthly wage up to a maximum
21 of five such children in addition to any payments theretofore paid
22 under such schedules for the benefit of and on account of each such
23 child.

24 (2) Beginning on the effective date of this section, the monthly
25 payments and the additional payments for the injured worker's spouse or
26 children provided in this section may not exceed an amount determined
27 by the department on the effective date of this section, adjusted for
28 inflation on June 30, 2006, and each June 30th thereafter, and
29 applicable to payments made during the twelve-month period following
30 the June 30th determination. The amount is determined by adjusting the
31 amount applicable during the previous twelve-month period to account
32 for inflation.

33 (3)(a) If the character of the injury or occupational disease is
34 such as to render the worker so physically helpless as to require the
35 hiring of the services of an attendant, the department shall make
36 monthly payments to such attendant for such services as long as such
37 requirement continues but such payments shall not obtain or be
38 operative while the worker is receiving care under or pursuant to the
39 provisions of this title except for care granted at the discretion of

1 the supervisor pursuant to RCW 51.36.010: PROVIDED, That such payments
2 shall not be considered compensation nor shall they be subject to any
3 limitation upon total compensation payments.

4 (b) No part of such additional payments shall be payable from the
5 accident fund.

6 (4) The director shall pay monthly from the supplemental pension
7 fund such an amount as will, when added to the compensation theretofore
8 paid under compensation schedules in effect prior to July 1, 1971,
9 equal the amounts hereinabove specified.

10 (5) In cases where money has been or shall be advanced to any such
11 person from the pension reserve, the additional amount to be paid under
12 this section shall be reduced by the amount of monthly pension which
13 was or is predicated upon such advanced portion of the pension reserve.

14 **Sec. 7.** RCW 51.32.075 and 1988 c 161 s 7 are each amended to read
15 as follows:

16 (1) Subject to subsection (2) of this section, the compensation or
17 death benefits payable pursuant to the provisions of this chapter for
18 temporary total disability, permanent total disability, or death
19 arising out of injuries or occupational diseases shall be adjusted as
20 follows:

21 ~~((+1))~~ (a) On July 1, 1982, there shall be an adjustment for those
22 whose right to compensation was established on or after July 1, 1971,
23 and before July 1, 1982. The adjustment shall be determined by
24 multiplying the amount of compensation to which they are entitled by a
25 fraction, the denominator of which shall be the average monthly wage in
26 the state under RCW 51.08.018 for the fiscal year in which such
27 person's right to compensation was established, and the numerator of
28 which shall be the average monthly wage in the state under RCW
29 51.08.018 on July 1, 1982.

30 ~~((+2))~~ (b) In addition to the adjustment established by
31 ~~((subsection (1)))~~ (a) of this ~~((section))~~ subsection, there shall be
32 another adjustment on July 1, 1983, for those whose right to
33 compensation was established on or after July 1, 1971, and before July
34 1983, which shall be determined by multiplying the amount of
35 compensation to which they are entitled by a fraction, the denominator
36 of which shall be the average monthly wage in the state under RCW
37 51.08.018 for the fiscal year in which such person's right to

1 compensation was established, and the numerator of which shall be the
2 average monthly wage in the state under RCW 51.08.018 on July 1, 1983.

3 ~~((+3))~~ (c) In addition to the adjustments under ~~((subsections (1)~~
4 ~~and (2))~~) (a) and (b) of this ~~((section))~~ subsection, further
5 adjustments shall be made beginning on July 1, 1984, and on each July
6 1st thereafter for those whose right to compensation was established on
7 or after July 1, 1971. The adjustment shall be determined by
8 multiplying the amount of compensation to which they are entitled by a
9 fraction, the denominator of which shall be the average monthly wage in
10 the state under RCW 51.08.018 for the fiscal year in which such
11 person's right to compensation was established, and the numerator of
12 which shall be the average monthly wage in the state under RCW
13 51.08.018 on July 1st of the year in which the adjustment is being
14 made. The department or self-insurer shall adjust the resulting
15 compensation rate to the nearest whole cent, not to exceed the average
16 monthly wage in the state as computed under RCW 51.08.018.

17 (2) Beginning on the effective date of this section, the annual
18 adjustments provided for in this section shall be an amount determined
19 by the department on the effective date of this section, adjusted for
20 inflation on June 30, 2006, and each June 30th thereafter, and
21 applicable to payments made during the twelve-month period following
22 the June 30th determination. The amount is determined by adjusting the
23 amount applicable during the previous twelve-month period to account
24 for inflation.

25 **Sec. 8.** RCW 51.32.080 and 1993 c 520 s 1 are each amended to read
26 as follows:

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

30 LOSS BY AMPUTATION

31	Of leg above the knee joint with short	
32	thigh stump (3" or less below the	\$54,000.0
33	tuberosity of ischium)	0
34	Of leg at or above knee joint with	
35	functional stump	48,600.00
36	Of leg below knee joint	43,200.00

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

1	Of index finger at metacarpophalangeal	
2	joint or with resection of metacarpal	
3	bone	12,150.00
4	Of index finger at proximal	
5	interphalangeal joint	9,720.00
6	Of index finger at distal interphalangeal	
7	joint	5,346.00
8	Of middle finger at metacarpophalangeal	
9	joint or with resection of metacarpal	
10	bone	9,720.00
11	Of middle finger at proximal	
12	interphalangeal joint	7,776.00
13	Of middle finger at distal interphalangeal	
14	joint	4,374.00
15	Of ring finger at metacarpophalangeal	
16	joint or with resection of metacarpal	
17	bone	4,860.00
18	Of ring finger at proximal interphalangeal	
19	joint	3,888.00
20	Of ring finger at distal interphalangeal	
21	joint	2,430.00
22	Of little finger at metacarpophalangeal	
23	joint or with resection of metacarpal	
24	bone	2,430.00
25	Of little finger at proximal interphalangeal	
26	joint	1,944.00
27	Of little finger at distal interphalangeal	
28	joint	972.00
29	MISCELLANEOUS	
30	Loss of one eye by enucleation	21,600.00
31	Loss of central visual acuity in one eye .	18,000.00
32	Complete loss of hearing in both ears . .	43,200.00
33	Complete loss of hearing in one ear . . .	7,200.00

1 (b) Beginning on July 1, 1993, compensation under this subsection
2 shall be computed as follows:

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

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

18 (iii) Beginning on the effective date of this section, and each
19 July 1st thereafter, the compensation amounts of the specified
20 disabilities listed in (a) of this subsection, as adjusted under
21 (b)(ii) of this subsection, shall be adjusted to account for inflation.

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
39 disabilities, the department shall enact rules having the force of law

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

7 (b) Until July 1, 1993, for purposes of calculating monetary
8 benefits under (a) of this subsection, the amount payable for total
9 bodily impairment shall be deemed to be ninety thousand dollars.
10 Beginning on July 1, 1993, for purposes of calculating monetary
11 benefits under (a) of this subsection, the amount payable for total
12 bodily impairment shall be adjusted as follows:

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

16 (ii) Beginning on July 1, 1994, and ~~((each July 1 thereafter))~~
17 ending on the effective date of this section, the amount payable for
18 total bodily impairment prescribed in (b)(i) of this subsection shall
19 be adjusted as provided in subsection (1)(b)(ii) of this section; and

20 (iii) Beginning on the effective date of this section, and each
21 July 1st thereafter, the amount payable for total bodily impairment
22 prescribed in (b)(i) of this subsection shall be adjusted as provided
23 in subsection (1)(b)(iii) of this section.

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

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

32 (ii) Beginning on July 1, 1994, and ~~((each July 1 thereafter))~~
33 ending on the effective date of this section, the sum prescribed in
34 (b)(i) of this subsection shall be adjusted as provided in subsection
35 (1)(b)(ii) of this section; and

36 (iii) Beginning on the effective date of this section, and each
37 July 1st thereafter, the sum prescribed in (b)(i) of this subsection
38 shall be adjusted as provided in subsection (1)(b)(iii) of this
39 section.

1 (4) If permanent partial disability compensation is followed by
2 permanent total disability compensation, any portion of the permanent
3 partial disability compensation which exceeds the amount that would
4 have been paid the injured worker if permanent total disability
5 compensation had been paid in the first instance, shall be deducted
6 from the pension reserve of such injured worker and his or her monthly
7 compensation payments shall be reduced accordingly.

8 (5) Should a worker receive an injury to a member or part of his or
9 her body already, from whatever cause, permanently partially disabled,
10 resulting in the amputation thereof or in an aggravation or increase in
11 such permanent partial disability but not resulting in the permanent
12 total disability of such worker, his or her compensation for such
13 partial disability shall be adjudged with regard to the previous
14 disability of the injured member or part and the degree or extent of
15 the aggravation or increase of disability thereof.

16 (6) When the compensation provided for in subsections (1) through
17 (3) of this section exceeds three times the average monthly wage in the
18 state as computed under the provisions of RCW 51.08.018, payment shall
19 be made in monthly payments in accordance with the schedule of
20 temporary total disability payments set forth in RCW 51.32.090 until
21 such compensation is paid to the injured worker in full, except that
22 the first monthly payment shall be in an amount equal to three times
23 the average monthly wage in the state as computed under the provisions
24 of RCW 51.08.018, and interest shall be paid at the rate of eight
25 percent on the unpaid balance of such compensation commencing with the
26 second monthly payment. However, upon application of the injured
27 worker or survivor the monthly payment may be converted, in whole or in
28 part, into a lump sum payment, in which event the monthly payment shall
29 cease in whole or in part. Such conversion may be made only upon
30 written application of the injured worker or survivor to the department
31 and shall rest in the discretion of the department depending upon the
32 merits of each individual application. Upon the death of a worker all
33 unpaid installments accrued shall be paid according to the payment
34 schedule established prior to the death of the worker to the widow or
35 widower, or if there is no widow or widower surviving, to the dependent
36 children of such claimant, and if there are no such dependent children,
37 then to such other dependents as defined by this title.

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

1 **Sec. 9.** RCW 51.32.090 and 2004 c 65 s 9 are each amended to read
2 as follows:

3 (1) When the total disability is only temporary, the schedule of
4 payments contained in RCW 51.32.060 (1) (~~and~~) or (2) and (3) shall
5 apply, so long as the total disability continues.

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

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

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

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

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

34 (c) The injured worker remains eligible for the benefits provided
35 in this subsection only until the injured worker's condition is
36 medically fixed and stable.

37 (4)(a) Whenever the employer of injury requests that a worker who
38 is entitled to temporary total disability under this chapter be
39 certified by a physician or licensed advanced registered nurse

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

24 (b) Once the worker returns to work under the terms of this
25 subsection (4), he or she shall not be assigned by the employer to work
26 other than the available work described without the worker's written
27 consent, or without prior review and approval by the worker's physician
28 or licensed advanced registered nurse practitioner.

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

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

1 (5) 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) Should a worker suffer a temporary total disability and should
9 his or her employer at the time of the injury continue to pay him or
10 her the wages which he or she was earning at the time of such injury,
11 such injured worker shall not receive any payment provided in
12 subsection (1) or (2) of this section during the period his or her
13 employer shall so pay such wages.

14 (7) (~~In no event shall~~) (a) For claims with date of injury or
15 manifestation of occupational disease before the effective date of this
16 section, the monthly payments provided in this section may not exceed
17 the applicable percentage of the average monthly wage in the state as
18 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%

24 (b) For claims with date of injury or manifestation of occupational
25 disease on or after the effective date of this section, but before June
26 30, 2006, the monthly payments provided in this subsection may not
27 exceed one hundred twenty percent of the average monthly wage in the
28 state on the effective date of this section. For all claims with date
29 of injury or manifestation of occupational disease on or after July 1,
30 2006, the monthly payments provided in this subsection may not exceed
31 an amount determined by the department on the effective date of this
32 section, and each June 30th thereafter, and applicable to claims with
33 date of injury or manifestation of occupational disease occurring in
34 the twelve-month period following the June 30th determination. The
35 amount is determined by adjusting the amount on the effective date of
36 this section for inflation on June 30, 2006. In subsequent years, the

1 department shall adjust the amount applicable during the previous
2 twelve-month period to account for inflation.

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

6 **Sec. 10.** RCW 51.32.090 and 1993 c 521 s 3, 1993 c 299 s 1, and
7 1993 c 271 s 1 are each reenacted and amended to read as follows:

8 (1) When the total disability is only temporary, the schedule of
9 payments contained in RCW 51.32.060 (1) (~~and~~) or (2) and (3) shall
10 apply, so long as the total disability continues.

11 (2) Any compensation payable under this section for children not in
12 the custody of the injured worker as of the date of injury shall be
13 payable only to such person as actually is providing the support for
14 such child or children pursuant to the order of a court of record
15 providing for support of such child or children. This subsection does
16 not apply to claims filed on or after the effective date of section 9
17 of this act.

18 (3)(a) As soon as recovery is so complete that the worker is
19 capable of gainful employment on a reasonably continuous basis and the
20 present earning power of the worker, at any kind of work, is restored
21 to that existing at the time of the occurrence of the injury, the
22 payments shall cease. If and so long as the present earning power is
23 only partially restored and the worker is working, the payments shall:

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

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

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

1 (c) The injured worker remains eligible for the benefits provided
2 in this subsection only until the injured worker's condition is
3 medically fixed and stable.

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

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

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

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

1 (5) 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) Should a worker suffer a temporary total disability and should
9 his or her employer at the time of the injury continue to pay him or
10 her the wages which he or she was earning at the time of such injury,
11 such injured worker shall not receive any payment provided in
12 subsection (1) or (2) of this section during the period his or her
13 employer shall so pay such wages.

14 (7) (~~In no event shall~~) (a) For claims with date of injury or
15 manifestation of occupational disease before the effective date of
16 section 9 of this act, the monthly payments provided in this section
17 may not exceed the applicable percentage of the average monthly wage in
18 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%

19 (b) For claims with date of injury or manifestation of occupational
20 disease on or after the effective date of section 9 of this act, but
21 before June 30, 2006, the monthly payments provided in this subsection
22 may not exceed one hundred twenty percent of the average monthly wage
23 in the state on the effective date of section 9 of this act. For all
24 claims with date of injury or manifestation of occupational disease on
25 or after July 1, 2006, the monthly payments provided in this subsection
26 may not exceed an amount determined by the department on the effective
27 date of section 9 of this act, and each June 30th thereafter, and
28 applicable to claims with date of injury or manifestation of
29 occupational disease occurring in the twelve-month period following the
30 June 30th determination. The amount is determined by adjusting the
31 amount on the effective date of section 9 of this act for inflation on
32 June 30, 2006. In subsequent years, the department shall adjust the

1 amount applicable during the previous twelve-month period to account
2 for inflation.

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

6 **Sec. 11.** RCW 51.32.095 and 2004 c 65 s 10 are each amended to read
7 as follows:

8 (1) One of the primary purposes of this title is to enable the
9 injured worker to become employable at gainful employment. To this
10 end, the department or self-insurers shall utilize the services of
11 individuals and organizations, public or private, whose experience,
12 training, and interests in vocational rehabilitation and retraining
13 qualify them to lend expert assistance to the supervisor of industrial
14 insurance in such programs of vocational rehabilitation as may be
15 reasonable to make the worker employable consistent with his or her
16 physical and mental status. Where, after evaluation and recommendation
17 by such individuals or organizations and prior to final evaluation of
18 the worker's permanent disability and in the sole opinion of the
19 supervisor or supervisor's designee, whether or not medical treatment
20 has been concluded, vocational rehabilitation is both necessary and
21 likely to enable the injured worker to become employable at gainful
22 employment, the supervisor or supervisor's designee may, in his or her
23 sole discretion, pay or, if the employer is a self-insurer, direct the
24 self-insurer to pay the cost as provided in subsection (3) of this
25 section.

26 (2) When in the sole discretion of the supervisor or the
27 supervisor's designee vocational rehabilitation is both necessary and
28 likely to make the worker employable at gainful employment, then the
29 following order of priorities shall be used:

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

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

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

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

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

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

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

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

6 (i) Short-term retraining and job placement.

7 (3)(a) Except as provided in (b) of this subsection, costs for
8 vocational rehabilitation benefits allowed by the supervisor or
9 supervisor's designee under subsection (1) of this section may include
10 the cost of books, tuition, fees, supplies, equipment, transportation,
11 child or dependent care, and other necessary expenses for any such
12 worker in an amount not to exceed three thousand dollars in any fifty-
13 two week period (~~except as authorized by RCW 51.60.060~~), and the cost
14 of continuing the temporary total disability compensation under RCW
15 51.32.090 while the worker is actively and successfully undergoing a
16 formal program of vocational rehabilitation.

17 (b) Beginning with vocational rehabilitation plans approved on or
18 after July 1, 1999, costs for vocational rehabilitation benefits
19 allowed by the supervisor or supervisor's designee under subsection (1)
20 of this section may include the cost of books, tuition, fees, supplies,
21 equipment, child or dependent care, and other necessary expenses for
22 any such worker in an amount not to exceed (~~four~~) five thousand
23 dollars in any fifty-two week period (~~except as authorized by RCW~~
24 ~~51.60.060~~), and the cost of transportation and continuing the
25 temporary total disability compensation under RCW 51.32.090 while the
26 worker is actively and successfully undergoing a formal program of
27 vocational rehabilitation.

28 (c) The expenses allowed under (a) or (b) of this subsection may
29 include training fees for on-the-job training and the cost of
30 furnishing tools and other equipment necessary for self-employment or
31 reemployment. However, compensation or payment of retraining with job
32 placement expenses under (a) or (b) of this subsection may not be
33 authorized for a period of more than fifty-two weeks, except that such
34 period may, in the sole discretion of the supervisor after his or her
35 review, be extended for an additional fifty-two weeks or portion
36 thereof by written order of the supervisor.

37 (d) In cases where the worker is required to reside away from his
38 or her customary residence, the reasonable cost of board and lodging
39 shall also be paid.

1 (e) Costs paid under this subsection shall be chargeable to the
2 employer's cost experience or shall be paid by the self-insurer as the
3 case may be.

4 (4) In addition to the vocational rehabilitation expenditures
5 provided for under subsection (3) of this section, an additional five
6 thousand dollars may, upon authorization of the supervisor or the
7 supervisor's designee, be expended for: (a) Accommodations for an
8 injured worker that are medically necessary for the worker to
9 participate in an approved retraining plan; and (b) accommodations
10 necessary to perform the essential functions of an occupation in which
11 an injured worker is seeking employment, consistent with the retraining
12 plan or the recommendations of a vocational evaluation. The injured
13 worker's attending physician or licensed advanced registered nurse
14 practitioner must verify the necessity of the modifications or
15 accommodations. The total expenditures authorized in this subsection
16 and the expenditures authorized under RCW 51.32.250 shall not exceed
17 five thousand dollars.

18 (5) The department shall establish criteria to monitor the quality
19 and effectiveness of rehabilitation services provided by the
20 individuals and organizations used under subsection (1) of this
21 section. The state fund shall make referrals for vocational
22 rehabilitation services based on these performance criteria.

23 (6) The department shall engage in, where feasible and cost-
24 effective, a cooperative program with the state employment security
25 department to provide job placement services under this section.

26 (7) The benefits in this section shall be provided for the injured
27 workers of self-insured employers. Self-insurers shall report both
28 benefits provided and benefits denied under this section in the manner
29 prescribed by the department by rule adopted under chapter 34.05 RCW.
30 The director may, in his or her sole discretion and upon his or her own
31 initiative or at any time that a dispute arises under this section,
32 promptly make such inquiries as circumstances require and take such
33 other action as he or she considers will properly determine the matter
34 and protect the rights of the parties.

35 (8) Except as otherwise provided in this section, the benefits
36 provided for in this section are available to any otherwise eligible
37 worker regardless of the date of industrial injury. However, claims
38 shall not be reopened solely for vocational rehabilitation purposes.

1 **Sec. 12.** RCW 51.32.095 and 1999 c 110 s 1 are each amended to read
2 as follows:

3 (1) One of the primary purposes of this title is to enable the
4 injured worker to become employable at gainful employment. To this
5 end, the department or self-insurers shall utilize the services of
6 individuals and organizations, public or private, whose experience,
7 training, and interests in vocational rehabilitation and retraining
8 qualify them to lend expert assistance to the supervisor of industrial
9 insurance in such programs of vocational rehabilitation as may be
10 reasonable to make the worker employable consistent with his or her
11 physical and mental status. Where, after evaluation and recommendation
12 by such individuals or organizations and prior to final evaluation of
13 the worker's permanent disability and in the sole opinion of the
14 supervisor or supervisor's designee, whether or not medical treatment
15 has been concluded, vocational rehabilitation is both necessary and
16 likely to enable the injured worker to become employable at gainful
17 employment, the supervisor or supervisor's designee may, in his or her
18 sole discretion, pay or, if the employer is a self-insurer, direct the
19 self-insurer to pay the cost as provided in subsection (3) of this
20 section.

21 (2) When in the sole discretion of the supervisor or the
22 supervisor's designee vocational rehabilitation is both necessary and
23 likely to make the worker employable at gainful employment, then the
24 following order of priorities shall be used:

- 25 (a) Return to the previous job with the same employer;
- 26 (b) Modification of the previous job with the same employer
27 including transitional return to work;
- 28 (c) A new job with the same employer in keeping with any
29 limitations or restrictions;
- 30 (d) Modification of a new job with the same employer including
31 transitional return to work;
- 32 (e) Modification of the previous job with a new employer;
- 33 (f) A new job with a new employer or self-employment based upon
34 transferable skills;
- 35 (g) Modification of a new job with a new employer;
- 36 (h) A new job with a new employer or self-employment involving on-
37 the-job training;
- 38 (i) Short-term retraining and job placement.

1 (3)(a) Except as provided in (b) of this subsection, costs for
2 vocational rehabilitation benefits allowed by the supervisor or
3 supervisor's designee under subsection (1) of this section may include
4 the cost of books, tuition, fees, supplies, equipment, transportation,
5 child or dependent care, and other necessary expenses for any such
6 worker in an amount not to exceed three thousand dollars in any fifty-
7 two week period (~~except as authorized by RCW 51.60.060~~), and the cost
8 of continuing the temporary total disability compensation under RCW
9 51.32.090 while the worker is actively and successfully undergoing a
10 formal program of vocational rehabilitation.

11 (b) Beginning with vocational rehabilitation plans approved on or
12 after July 1, 1999, costs for vocational rehabilitation benefits
13 allowed by the supervisor or supervisor's designee under subsection (1)
14 of this section may include the cost of books, tuition, fees, supplies,
15 equipment, child or dependent care, and other necessary expenses for
16 any such worker in an amount not to exceed (~~four~~) five thousand
17 dollars in any fifty-two week period (~~except as authorized by RCW~~
18 ~~51.60.060~~), and the cost of transportation and continuing the
19 temporary total disability compensation under RCW 51.32.090 while the
20 worker is actively and successfully undergoing a formal program of
21 vocational rehabilitation.

22 (c) The expenses allowed under (a) or (b) of this subsection may
23 include training fees for on-the-job training and the cost of
24 furnishing tools and other equipment necessary for self-employment or
25 reemployment. However, compensation or payment of retraining with job
26 placement expenses under (a) or (b) of this subsection may not be
27 authorized for a period of more than fifty-two weeks, except that such
28 period may, in the sole discretion of the supervisor after his or her
29 review, be extended for an additional fifty-two weeks or portion
30 thereof by written order of the supervisor.

31 (d) In cases where the worker is required to reside away from his
32 or her customary residence, the reasonable cost of board and lodging
33 shall also be paid.

34 (e) Costs paid under this subsection shall be chargeable to the
35 employer's cost experience or shall be paid by the self-insurer as the
36 case may be.

37 (4) In addition to the vocational rehabilitation expenditures
38 provided for under subsection (3) of this section, an additional five
39 thousand dollars may, upon authorization of the supervisor or the

1 supervisor's designee, be expended for: (a) Accommodations for an
2 injured worker that are medically necessary for the worker to
3 participate in an approved retraining plan; and (b) accommodations
4 necessary to perform the essential functions of an occupation in which
5 an injured worker is seeking employment, consistent with the retraining
6 plan or the recommendations of a vocational evaluation. The injured
7 worker's attending physician must verify the necessity of the
8 modifications or accommodations. The total expenditures authorized in
9 this subsection and the expenditures authorized under RCW 51.32.250
10 shall not exceed five thousand dollars.

11 (5) The department shall establish criteria to monitor the quality
12 and effectiveness of rehabilitation services provided by the
13 individuals and organizations used under subsection (1) of this
14 section. The state fund shall make referrals for vocational
15 rehabilitation services based on these performance criteria.

16 (6) The department shall engage in, where feasible and cost-
17 effective, a cooperative program with the state employment security
18 department to provide job placement services under this section.

19 (7) The benefits in this section shall be provided for the injured
20 workers of self-insured employers. Self-insurers shall report both
21 benefits provided and benefits denied under this section in the manner
22 prescribed by the department by rule adopted under chapter 34.05 RCW.
23 The director may, in his or her sole discretion and upon his or her own
24 initiative or at any time that a dispute arises under this section,
25 promptly make such inquiries as circumstances require and take such
26 other action as he or she considers will properly determine the matter
27 and protect the rights of the parties.

28 (8) Except as otherwise provided in this section, the benefits
29 provided for in this section are available to any otherwise eligible
30 worker regardless of the date of industrial injury. However, claims
31 shall not be reopened solely for vocational rehabilitation purposes.

32 **Sec. 13.** RCW 51.36.020 and 1999 c 395 s 1 are each amended to read
33 as follows:

34 (1) When the injury to any worker is so serious as to require his
35 or her being taken from the place of injury to a place of treatment,
36 his or her employer shall, at the expense of the medical aid fund, or
37 self-insurer, as the case may be, furnish transportation to the nearest
38 place of proper treatment.

1 (2) Every worker whose injury results in the loss of one or more
2 limbs or eyes shall be provided with proper artificial substitutes and
3 every worker, who suffers an injury to an eye producing an error of
4 refraction, shall be once provided proper and properly equipped lenses
5 to correct such error of refraction and his or her disability rating
6 shall be based upon the loss of sight before correction.

7 (3) Every worker whose accident results in damage to or destruction
8 of an artificial limb, eye, or tooth, shall have same repaired or
9 replaced.

10 (4) Every worker whose hearing aid or eyeglasses or lenses are
11 damaged, destroyed, or lost as a result of an industrial accident shall
12 have the same restored or replaced. The department or self-insurer
13 shall be liable only for the cost of restoring damaged hearing aids or
14 eyeglasses to their condition at the time of the accident.

15 (5) All mechanical appliances necessary in the treatment of an
16 injured worker, such as braces, belts, casts, and crutches, shall be
17 provided and all mechanical appliances required as permanent equipment
18 after treatment has been completed shall continue to be provided or
19 replaced without regard to the date of injury or date treatment was
20 completed, notwithstanding any other provision of law.

21 (6) A worker, whose injury is of such short duration as to bring
22 him or her within the time limit provisions of RCW 51.32.090, shall
23 nevertheless receive during the omitted period medical, surgical, and
24 hospital care and service and transportation under the provisions of
25 this chapter.

26 (7) Whenever in the sole discretion of the supervisor it is
27 reasonable and necessary to provide residence modifications necessary
28 to meet the needs and requirements of the worker who has sustained
29 catastrophic injury, the department or self-insurer may be ordered to
30 pay an amount determined as follows:

31 (a) For claims with date of injury or manifestation of occupational
32 disease before the effective date of this section, the amount may not
33 ((to)) exceed the state's average annual wage for one year as
34 determined under RCW 50.04.355(~~(, as now existing or hereafter~~
35 amended,)) toward the cost of such modifications or construction.
36 ((Such))

37 (b) For claims with date of injury or manifestation of occupational
38 disease on or after the effective date of this section, but before June
39 30, 2006, the amount provided for in this subsection may not exceed the

1 average annual wage in the state on the effective date of this section.
2 For all claims with date of injury or manifestation of occupational
3 disease on or after July 1, 2006, the amount provided in this
4 subsection may not exceed an amount determined by the department on the
5 effective date of this section, and each June 30th thereafter, and
6 applicable to claims with date of injury or manifestation of
7 occupational disease occurring in the twelve-month period following the
8 June 30th determination. The amount is determined by adjusting the
9 amount on the effective date of this section for inflation on June 30,
10 2006. In subsequent years, the department shall adjust the amount
11 applicable during the previous twelve-month period to account for
12 inflation. Payment shall ((only)) be made under this subsection only
13 for the construction or modification of a residence in which the
14 injured worker resides. Only one residence of any worker may be
15 modified or constructed under this subsection, although the supervisor
16 may order more than one payment for any one home, up to the maximum
17 amount permitted by this section.

18 (8)(a) Whenever in the sole discretion of the supervisor it is
19 reasonable and necessary to modify a motor vehicle owned by a worker
20 who has become an amputee or becomes paralyzed because of an industrial
21 injury, the supervisor may pay or order a self-insurer to pay as
22 follows:

23 (i) For claims with date of injury or manifestation of occupational
24 disease before the effective date of this section, up to fifty percent
25 of the state's average annual wage for one year, as determined under
26 RCW 50.04.355(~~, to be paid by the department or self-insurer~~)) toward
27 the costs thereof.

28 (ii) For claims with date of injury or manifestation of
29 occupational disease on or after the effective date of this section,
30 but before June 30, 2006, the amount will be up to fifty percent of the
31 state's average annual wage as of the effective date of this section,
32 adjusted for inflation. For all claims with date of injury or
33 manifestation of occupational disease on or after July 1, 2006, the
34 amount provided in this subsection may not exceed an amount determined
35 by the department on the effective date of this section, and each June
36 30th thereafter, and applicable to claims with date of injury or
37 manifestation of occupational disease occurring in the twelve-month
38 period following the June 30th determination. The amount is determined
39 by adjusting the amount on the effective date of this section for

1 inflation on June 30, 2006. In subsequent years, the department shall
2 adjust the amount applicable during the previous twelve-month period to
3 account for inflation.

4 (b) In the sole discretion of the supervisor after his or her
5 review, the amount paid under this subsection may be increased by no
6 more than four thousand dollars by written order of the supervisor.

7 (9) The benefits provided by subsections (7) and (8) of this
8 section are available to any otherwise eligible worker regardless of
9 the date of industrial injury.

10 NEW SECTION. Sec. 14. A new section is added to chapter 51.44 RCW
11 to read as follows:

12 (1) The department of labor and industries shall prepare financial
13 statements on the state fund in accordance with applicable accounting
14 standards for the workers' compensation insurance industry, including
15 but not limited to the accident fund, the medical aid fund, the pension
16 reserve fund, the supplemental pension fund, and the second injury
17 fund. Statements shall be presented desegregated and in aggregate.

18 (2) Beginning in 2005, the state auditor shall contract with a
19 qualified accounting firm to conduct annual audits of the state fund.
20 As part of these audits, the auditor may contract with firms qualified
21 to perform a financial audit and a separate independent actuarial
22 audit.

23 (a) The firm or firms conducting the reviews shall be familiar with
24 the accounting standards applicable to the accounts under review, shall
25 have experience in workers' compensation reserving and rate making, and
26 shall employ staff who have attained fellowship in the casualty
27 actuarial society and shall maintain limits of errors and omission
28 insurance as prescribed by the auditor.

29 (b) The auditor shall not contract with the same firm for more than
30 five consecutive years.

31 (c) The auditor and the accounting firm shall determine the scope
32 of the financial audit which shall include, but is not limited to, an
33 opinion on whether the financial statements were prepared in accordance
34 with applicable accounting standards.

35 (d) The auditor shall determine the scope of the actuarial review,
36 which shall include, but is not limited to:

37 (i) An independent estimate of the claim reserves;

1 (ii) An evaluation of the effect of discounting using various
2 investment yields on reported reserve levels;

3 (iii) A retrospective test of the accuracy of labor and industries
4 reserve estimates over at least a fifteen-year period;

5 (iv) An assessment of the actuarial calculations underlying the
6 break-even indicated rate level;

7 (v) A retrospective test of the accuracy of past rate level
8 indications over at least a ten-year period;

9 (vi) An assessment of the actuarial reserving calculations;

10 (vii) An assessment of the financial impact of the proposed rate
11 level on the actuarial soundness of the industrial insurance fund,
12 taking into consideration the risks inherent with insurance and the
13 fact that competition does not mitigate rate setting.

14 (e) The department of labor and industries shall cooperate with the
15 firms in all respects and shall permit the firms full access to all
16 information the firms deem necessary for a true and complete review.

17 (f) The cost of the audit shall be paid by the state fund under
18 separate contract.

19 (3) The auditor shall issue an annual report to the governor, the
20 leaders of the four caucuses in the senate and the house of
21 representatives, and the director of the department of labor and
22 industries on the results of the financial and actuarial audits and
23 reviews, within six months of the end of the fiscal year. The report
24 may include recommendations.

25 (4) The audit report shall be available for public inspection.

26 (5) Not later than ninety days after the auditor completes and
27 delivers to the appropriate authority an audit under subsection (2) of
28 this section, the director of the department of labor and industries
29 shall notify the auditor in writing of the measures taken and proposed
30 to be taken, if any, to respond to the recommendations of the audit
31 report. The auditor may extend the ninety-day period for good cause.

32 **Sec. 15.** RCW 51.52.132 and 1965 ex.s. c 63 s 2 are each amended to
33 read as follows:

34 ~~((Where the department, the board or the court, pursuant to RCW~~
35 ~~51.52.120 or 51.52.130 fixes the attorney's fee, it shall be unlawful~~
36 ~~for)) (1) An attorney ((to)) engaged in the representation of any
37 worker or beneficiary may charge or receive ((any)) a fee ((in excess
38 of that)) for services rendered in connection with securing benefits~~

1 under this title that is twenty percent of the compensation awarded
2 under chapter 51.32 RCW; or the amount fixed by the department, board,
3 or the court under RCW 51.52.120; whichever is less. This fee
4 requirement shall apply regardless of the number of forums in which the
5 attorney has represented the worker or beneficiary.

6 (2) The department shall notify any worker or beneficiary
7 represented by an attorney that the attorney's fee is restricted as
8 provided in subsection (1) of this section.

9 (3) Any attorney entitled to a fee under this chapter shall be paid
10 by the worker or beneficiary but only after the worker or beneficiary
11 has received the total compensation to which he or she is entitled
12 under chapter 51.32 RCW.

13 (4) Any person who violates any provision of this section ((shall
14 be)):

15 (a) Is guilty of a misdemeanor; and

16 (b) From the date of conviction under (a) of this subsection, may
17 not engage in the representation for a fee of a worker or beneficiary
18 in connection with securing benefits under this title.

19 **Sec. 16.** RCW 51.52.120 and 2003 c 53 s 285 are each amended to
20 read as follows:

21 ~~(1) ((It shall be unlawful for an attorney engaged in the~~
22 ~~representation of any worker or beneficiary to charge for services in~~
23 ~~the department any fee in excess of a reasonable fee, of not more than~~
24 ~~thirty percent of the increase in the award secured by the attorney's~~
25 ~~services. Such reasonable fee shall be fixed by)) For services~~
26 ~~rendered before the department in connection with securing benefits~~
27 ~~under this title, the director or the director's designee shall fix a~~
28 ~~reasonable fee, subject to RCW 51.52.132, for services performed by an~~
29 ~~attorney for ((such)) a worker or beneficiary, but only if ((written~~
30 ~~application therefor is made by the attorney, worker, or beneficiary))~~
31 the attorney, worker, or beneficiary applies in writing within one year
32 from the date the final decision and order of the department is
33 communicated to the party making the application.

34 (2)(a) If, on appeal to the board, the order, decision, or award of
35 the department is reversed or modified and additional relief is granted
36 to a worker or beneficiary, or in cases where a party other than the
37 worker or beneficiary is the appealing party and the worker's or
38 beneficiary's right to relief is sustained by the board, the board

1 shall fix a reasonable fee, subject to RCW 51.52.132, for the services
2 of ~~((his or her))~~ the worker's or beneficiary's attorney in proceedings
3 before the board but only if ~~((written application therefor is made by~~
4 ~~the attorney, worker, or beneficiary))~~ the attorney, worker, or
5 beneficiary applies in writing within one year from the date the final
6 decision and order of the board is communicated to the party making the
7 application.

8 (b) In fixing the ~~((amount of such attorney's))~~ fee, the board
9 shall take into consideration the fee ~~((allowed))~~, if any, fixed by the
10 director or the director's designee, for the attorney's services before
11 the department, and the board may review the fee fixed by the director
12 or the director's designee.

13 (3)(a) If, on appeal to the superior or appellate court from the
14 decision and order of the board, the decision and order is reversed or
15 modified and additional relief is granted to a worker or beneficiary,
16 or in cases where a party other than the worker or beneficiary is the
17 appealing party and the worker's or beneficiary's right to relief is
18 sustained, the court shall fix a reasonable fee, subject to RCW
19 51.52.132, for the services before the court of the worker's or
20 beneficiary's attorney.

21 (b) In fixing the fee, the court shall take into consideration the
22 fee or fees, if any, fixed by the director or the director's designee
23 or the board for the attorney's services before the department and the
24 board under subsections (1) and (2) of this section.

25 (4) Any attorney's fee ~~((set))~~ fixed by the ~~((department))~~ director
26 or the director's designee or the board may be reviewed by the superior
27 court upon application of such attorney, worker, or beneficiary. The
28 department or self-insured employer, as the case may be, shall be
29 served a copy of the application and shall be entitled to appear and
30 take part in the proceedings. ~~((Where the board, pursuant to this~~
31 ~~section, fixes the attorney's fee, it shall be unlawful for an attorney~~
32 ~~to charge or receive any fee for services before the board in excess of~~
33 ~~that fee fixed by the board.~~

34 ~~((3) Any person who violates this section is guilty of a~~
35 ~~misdemeanor.))~~

36 **Sec. 17.** RCW 51.52.130 and 1993 c 122 s 1 are each amended to read
37 as follows:

1 (~~If, on appeal to the superior or appellate court from the~~
2 ~~decision and order of the board, said decision and order is reversed or~~
3 ~~modified and additional relief is granted to a worker or beneficiary,~~
4 ~~or in cases where a party other than the worker or beneficiary is the~~
5 ~~appealing party and the worker's or beneficiary's right to relief is~~
6 ~~sustained, a reasonable fee for the services of the worker's or~~
7 ~~beneficiary's attorney shall be fixed by the court. In fixing the fee~~
8 ~~the court shall take into consideration the fee or fees, if any, fixed~~
9 ~~by the director and the board for such attorney's services before the~~
10 ~~department and the board. If the court finds that the fee fixed by the~~
11 ~~director or by the board is inadequate for services performed before~~
12 ~~the department or board, or if the director or the board has fixed no~~
13 ~~fee for such services, then the court shall fix a fee for the~~
14 ~~attorney's services before the department, or the board, as the case~~
15 ~~may be, in addition to the fee fixed for the services in the court.))~~
16 If, in a worker or beneficiary appeal to the superior or appellate
17 court from the decision and order of the board, the decision and order
18 of the board is reversed or modified and if the accident fund or
19 medical aid fund is affected by the litigation, or if in an appeal by
20 the department or employer the worker or beneficiary's right to relief
21 is sustained, or in an appeal by a worker involving a state fund
22 employer with twenty-five employees or less, in which the department
23 does not appear and defend, and the board order in favor of the
24 employer is sustained, the attorney's fee permitted under RCW 51.52.132
25 and fixed by the court under RCW 51.52.120, for services before the
26 court only, and the fees of medical and other witnesses and the costs
27 shall be payable out of the administrative fund of the department. In
28 the case of self-insured employers, the attorney's fee(~~s~~) permitted
29 under RCW 51.52.132 and fixed by the court under RCW 51.52.120, for
30 services before the court only, and the fees of medical and other
31 witnesses and the costs shall be payable directly by the self-insured
32 employer.

33 NEW SECTION. Sec. 18. A new section is added to chapter 51.08 RCW
34 to read as follows:

35 The department may adopt rules necessary to implement section 2 of
36 this act.

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

3 The department may adopt rules necessary to implement sections 9
4 and 10 of this act.

5 NEW SECTION. **Sec. 20.** Sections 9 and 11 of this act expire June
6 30, 2007.

7 NEW SECTION. **Sec. 21.** (1) Sections 10 and 12 of this act take
8 effect June 30, 2007.

9 (2) Sections 1 through 9, 11, and 13 through 20 of this act are
10 necessary for the immediate preservation of the public peace, health,
11 or safety, or support of the state government and its existing public
12 institutions, and take effect immediately.

--- END ---