

**INITIATIVE 334**

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. 334 to the Legislature is a true and correct copy as it was received by this office.

AN ACT Relating to worker's compensation; amending RCW 51.16.035, 51.16.140, 51.32.073, 51.32.370, 51.32.095, 51.32.095, 51.52.120, 51.52.130, and 51.52.132; reenacting RCW 51.08.178, 51.36.010, and 51.36.010; adding a new section to chapter 51.36 RCW; adding a new section to chapter 51.18 RCW; adding a new section to chapter 51.04 RCW; prescribing penalties; providing an effective date; and providing an expiration date.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 51.36 RCW to read as follows:

Any employer who provided health care coverage, as a benefit, to a worker at the time the worker suffered an injury covered by this title must continue to provide the same health care coverage to the worker during the time that the worker is unable to return to work. Any premium and copays paid by the worker would continue to be paid by the worker.

**Sec. 2.** RCW 51.16.035 and 1999 c 7 s 8 are each amended to read as follows:

(1) The department shall classify all occupations or industries in accordance with their degree of hazard and fix therefor basic rates of premium which shall be the lowest necessary to maintain actuarial solvency of the accident and medical aid funds in accordance with recognized insurance principles. The department shall formulate and adopt rules and regulations governing the method of premium calculation and collection and providing for a rating system consistent with recognized principles of workers' compensation insurance which shall be designed to stimulate and encourage accident prevention and to facilitate collection. The department may annually, or at such other times as it deems necessary to maintain solvency of the funds, readjust rates in accordance with the rating system to become effective on such dates as the department may designate.

(2) In providing a retrospective rating plan under RCW 51.18.010, the department (~~may consider each individual retrospective rating group as a single employing entity for purposes of~~) shall send all dividends or premium discounts directly to the employer of record. In calculating the amount of the dividends or premium discounts, the department shall remove from the calculation of the standard industrial insurance premium, the annual medical aid premium amount paid.

NEW SECTION. **Sec. 3.** A new section is added to chapter 51.18 RCW to read as follows:

(1) To remain eligible for the retrospective rating program and receive dividends to premium discounts, individual employers must, on a biannual basis, maintain a work place safety record equal to or better than the industry average.

(2) Employers whose work place safety records are worse than the industry average shall not be eligible to participate in the retrospective rating program for a period of two years.

**Sec. 4.** RCW 51.08.178 and 1988 c 161 s 12 are each reenacted to read as follows:

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

multiplying the daily wage the worker was receiving at the time of the injury:

- (a) By five, if the worker was normally employed one day a week;
- (b) By nine, if the worker was normally employed two days a week;
- (c) By thirteen, if the worker was normally employed three days a week;
- (d) By eighteen, if the worker was normally employed four days a week;
- (e) By twenty-two, if the worker was normally employed five days a week;
- (f) By twenty-six, if the worker was normally employed six days a week;
- (g) By thirty, if the worker was normally employed seven days a week.

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

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

(3) If, within the twelve months immediately preceding the injury, the worker has received from the employer at the time of injury a bonus as part of the contract of hire, the average monthly value of such bonus shall be included in determining the worker's monthly wages.

(4) In cases where a wage has not been fixed or cannot be reasonably and fairly determined, the monthly wage shall be computed on

the basis of the usual wage paid other employees engaged in like or similar occupations where the wages are fixed.

**Sec. 5.** RCW 51.16.140 and 1989 c 385 s 3 are each amended to read as follows:

(1) Every employer who is not a self-insurer shall ~~((deduct from the))~~ pay ~~((of each of his or her workers one half of the amount he or she is required to pay,))~~ for medical benefits within each risk classification. Such amount shall be periodically determined by the director and reported by him or her to all employers under this title: PROVIDED, That the state governmental unit shall pay the entire amount into the medical aid fund for volunteers, as defined in RCW 51.12.035, and the state apprenticeship council shall pay the entire amount into the medical aid fund for registered apprentices or trainees, for the purposes of RCW 51.12.130. ~~((The deduction under this section is not authorized for premiums assessed under RCW 51.16.210.))~~

(2) It shall be unlawful for the employer, unless specifically authorized by this title, to deduct or obtain any part of the premium or other costs required to be by him or her paid from the wages or earnings of any of his or her workers, and the making of or attempt to make any such deduction shall be a gross misdemeanor.

**Sec. 6.** RCW 51.32.073 and 1989 c 385 s 4 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, each employer shall ~~((retain from the earnings of each worker))~~ pay that amount as shall be fixed from time to time by the director, the basis for measuring said amount to be determined by the director. ~~((The money so retained shall be matched in an equal amount by each employer, and))~~ All such moneys shall be remitted to the department in such manner and at such intervals as the department directs and shall be placed in the supplemental pension fund~~((:—PROVIDED, That))~~. The state apprenticeship council shall pay the entire amount into the supplemental pension fund for registered apprentices or trainees during their participation in supplemental and related instruction classes. The moneys so collected shall be used exclusively for the additional payments from the supplemental pension fund prescribed in this title and for the amount of any increase payable under the provisions of RCW 51.32.075, as now or hereafter amended, and shall be no more than

necessary to make such payments on a current basis. The department may require a self-insurer to make any additional payments which are payable from the supplemental pension fund and thereafter such self-insurer shall be reimbursed (~~(therefrom)~~) from the fund.

(2) None of the amount assessed for the supplemental pension fund under RCW 51.16.210 may be retained from the earnings of workers covered under RCW 51.16.210.

**Sec. 7.** RCW 51.32.370 and 1994 c 265 s 4 are each amended to read as follows:

(1) The department shall conduct research on chemically related illnesses, which shall include contracting with recognized medical research institutions. The department shall develop an implementation plan for research based on sound scientific research criteria, such as double blind studies, and shall include adequate provisions for peer review, and submit the plan to the (~~(worker's [workers'])~~) workers' compensation advisory committee for review and approval. Following approval of the plan, all specific proposals for projects under the plan shall be submitted for review to a scientific advisory committee, established to provide scientific oversight of research projects, and to the workers' compensation advisory committee. The department shall include a research project that encourages regional cooperation in addressing chemically related illness.

(2) Expenditures for research projects shall be within legislative appropriations from the medical aid fund, with self-insured employers and the state fund each paying a pro rata share, based on the number of worker hours, of the authorized expenditures. (~~(For the purposes of this subsection only, self-insured employers may deduct from the pay of each of their employees one half of the share charged to the employer for the expenditures from the medical aid fund.)~~)

**Sec. 8.** RCW 51.36.010 and 2004 c 65 s 11 are each reenacted to read as follows:

Upon the occurrence of any injury to a worker entitled to compensation under the provisions of this title, he or she shall receive proper and necessary medical and surgical services at the hands of a physician or licensed advanced registered nurse practitioner of his or her own choice, if conveniently located, and proper and necessary hospital care and services during the period of his or her

disability from such injury, but the same shall be limited in point of duration as follows:

In the case of permanent partial disability, not to extend beyond the date when compensation shall be awarded him or her, except when the worker returned to work before permanent partial disability award is made, in such case not to extend beyond the time when monthly allowances to him or her shall cease; in case of temporary disability not to extend beyond the time when monthly allowances to him or her shall cease: PROVIDED, That after any injured worker has returned to his or her work his or her medical and surgical treatment may be continued if, and so long as, such continuation is deemed necessary by the supervisor of industrial insurance to be necessary to his or her more complete recovery; in case of a permanent total disability not to extend beyond the date on which a lump sum settlement is made with him or her or he or she is placed upon the permanent pension roll: PROVIDED, HOWEVER, That the supervisor of industrial insurance, solely in his or her discretion, may authorize continued medical and surgical treatment for conditions previously accepted by the department when such medical and surgical treatment is deemed necessary by the supervisor of industrial insurance to protect such worker's life or provide for the administration of medical and therapeutic measures including payment of prescription medications, but not including those controlled substances currently scheduled by the state board of pharmacy as Schedule I, II, III, or IV substances under chapter 69.50 RCW, which are necessary to alleviate continuing pain which results from the industrial injury. In order to authorize such continued treatment the written order of the supervisor of industrial insurance issued in advance of the continuation shall be necessary.

The supervisor of industrial insurance, the supervisor's designee, or a self-insurer, in his or her sole discretion, may authorize inoculation or other immunological treatment in cases in which a work-related activity has resulted in probable exposure of the worker to a potential infectious occupational disease. Authorization of such treatment does not bind the department or self-insurer in any adjudication of a claim by the same worker or the worker's beneficiary for an occupational disease.

**Sec. 9.** RCW 51.36.010 and 1986 c 58 s 6 are each reenacted to read as follows:

Upon the occurrence of any injury to a worker entitled to compensation under the provisions of this title, he or she shall receive proper and necessary medical and surgical services at the hands of a physician of his or her own choice, if conveniently located, and proper and necessary hospital care and services during the period of his or her disability from such injury, but the same shall be limited in point of duration as follows:

In the case of permanent partial disability, not to extend beyond the date when compensation shall be awarded him or her, except when the worker returned to work before permanent partial disability award is made, in such case not to extend beyond the time when monthly allowances to him or her shall cease; in case of temporary disability not to extend beyond the time when monthly allowances to him or her shall cease: PROVIDED, That after any injured worker has returned to his or her work his or her medical and surgical treatment may be continued if, and so long as, such continuation is deemed necessary by the supervisor of industrial insurance to be necessary to his or her more complete recovery; in case of a permanent total disability not to extend beyond the date on which a lump sum settlement is made with him or her or he or she is placed upon the permanent pension roll: PROVIDED, HOWEVER, That the supervisor of industrial insurance, solely in his or her discretion, may authorize continued medical and surgical treatment for conditions previously accepted by the department when such medical and surgical treatment is deemed necessary by the supervisor of industrial insurance to protect such worker's life or provide for the administration of medical and therapeutic measures including payment of prescription medications, but not including those controlled substances currently scheduled by the state board of pharmacy as Schedule I, II, III, or IV substances under chapter 69.50 RCW, which are necessary to alleviate continuing pain which results from the industrial injury. In order to authorize such continued treatment the written order of the supervisor of industrial insurance issued in advance of the continuation shall be necessary.

The supervisor of industrial insurance, the supervisor's designee, or a self-insurer, in his or her sole discretion, may authorize inoculation or other immunological treatment in cases in which a work-related activity has resulted in probable exposure of the worker to a potential infectious occupational disease. Authorization of such treatment does not bind the department or self-insurer in any

adjudication of a claim by the same worker or the worker's beneficiary for an occupational disease.

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

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

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

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer including transitional return to work;
- (c) A new job with the same employer in keeping with any limitations or restrictions;
- (d) Modification of a new job with the same employer including transitional return to work;
- (e) Modification of the previous job with a new employer;
- (f) A new job with a new employer or self-employment based upon transferable skills;
- (g) Modification of a new job with a new employer;



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

(i) Short-term retraining and job placement.

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

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

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

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

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

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

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

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

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

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

**Sec. 11.** RCW 51.32.095 and 1999 c 110 s 1 are each amended to read as follows:

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

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

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer including transitional return to work;
- (c) A new job with the same employer in keeping with any limitations or restrictions;
- (d) Modification of a new job with the same employer including transitional return to work;
- (e) Modification of the previous job with a new employer;
- (f) A new job with a new employer or self-employment based upon transferable skills;
- (g) Modification of a new job with a new employer;
- (h) A new job with a new employer or self-employment involving on-the-job training;
- (i) Short-term retraining and job placement.

(3)(a) Except as provided in (b) of this subsection, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include

the cost of books, tuition, fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed three thousand dollars in any fifty-two week period except as authorized by RCW 51.60.060, and the cost of continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

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

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

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

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

(4) In addition to the vocational rehabilitation expenditures provided for under subsection (3) of this section, an additional five thousand dollars may, upon authorization of the supervisor or the supervisor's designee, be expended for: (a) Accommodations for an injured worker that are medically necessary for the worker to participate in an approved retraining plan; and (b) accommodations necessary to perform the essential functions of an occupation in which

an injured worker is seeking employment, consistent with the retraining plan or the recommendations of a vocational evaluation. The injured worker's attending physician must verify the necessity of the modifications or accommodations. The total expenditures authorized in this subsection and the expenditures authorized under RCW 51.32.250 shall not exceed five thousand dollars.

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

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

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

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

**NEW SECTION. Sec. 12.** A new section is added to chapter 51.04 RCW to read as follows:

(1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this title, or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others or any right afforded by this title.

(2) Such discrimination shall apply to but not be limited to:

(a) Encouraging or intimidating a worker not to report a claim under this title or encouraging a worker to file a medical claim under a health insurance plan;

(b) Employer abuse of a light duty plan or kept on salary agreement;

(c) An employer encouraging or requiring a worker to falsely assume independent contractor status; or

(d) Employer misclassification of workers in order to reduce the employers' industrial insurance rates.

(3) It is presumed that if the worker is disciplined or terminated from employment within ninety days of the filing of a complaint, that such employer action is discriminatory or retaliatory or both.

(4) A discriminatory or retaliatory employer action, as defined in this section, is subject to a minimum of five thousand dollars for each discriminatory or retaliatory act along with reinstatement of the worker to his or her former position with back pay when appropriate.

(5) If an employer violates this section, a claim for benefits under this Act shall not be denied on the grounds that it was filed beyond the statute of limitations.

**Sec. 13.** RCW 51.52.120 and 2003 c 53 s 285 are each amended to read as follows:

(1) It shall be unlawful for an attorney engaged in the representation of any worker or beneficiary to charge for services in the department any fee in excess of a reasonable fee, of not more than thirty percent of the increase in the award secured by the attorney's services. Such reasonable fee shall be fixed by the director or the director's designee for services performed by an attorney for such worker or beneficiary, if written application therefor is made by the attorney, worker, or beneficiary within one year from the date the final decision and order of the department is communicated to the party making the application.

(2) It is unlawful for an attorney engaged in the representation of any employer to charge for services at the department any fee in excess of a reasonable fee of not more than thirty percent of the benefits in controversy which the employer avoids being responsible for paying as a result of the attorney's services. A controversy must be extant and must be regarding an issue which a reasonable person would conclude that legal advice was necessary. The amount in controversy is the

amount that a reasonable person, based upon affirmative claims made by the claimant, department, or provider, would conclude was being put in controversy. If an attorney charges an employer a fee for services, the attorney must, within ten days of a request by the department or claimant, provide a disclosure of the amount of the fee being charged and a reasonable explanation as to how the attorney calculated the fee, detailing the issues and amounts in controversy which the attorney's services caused the employer to avoid being responsible for. In cases before the department, such disclosure shall be made in writing to the director of the department who shall immediately forward such disclosure to the claimant and employer. Such reasonable fee shall be fixed by the director or the director's designee for services performed by an attorney for such employer, if written application therefor is made by the attorney, claimant, or employer within one year from the date that the disclosure is communicated to the worker and employer.

(3) If, on appeal to the board, the order, decision, or award of the department is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained by the board, the board shall fix a reasonable fee for the services of his or her attorney in proceedings before the board if written application therefor is made by the attorney, worker, or beneficiary within one year from the date the final decision and order of the board is communicated to the party making the application. In fixing the amount of such attorney's fee, the board shall take into consideration the fee allowed, if any, by the director, for services before the department, and the board may review the fee fixed by the director. Any attorney's fee set by the department or the board may be reviewed by the superior court upon application of such attorney, worker, or beneficiary. The department or self-insured employer, as the case may be, shall be served a copy of the application and shall be entitled to appear and take part in the proceedings. Where the board, pursuant to this section, fixes the attorney's fee, it shall be unlawful for an attorney to charge or receive any fee for services before the board in excess of that fee fixed by the board.

~~((3))~~ (4) On appeal to the board, the board shall fix a reasonable fee for the services of the employer's attorney in proceedings before the board if written application therefor is made by

the attorney, worker, beneficiary, or employer within one year from the date the final decision and order of the board is communicated to the party making the application. In fixing the amount of the attorney's fee, the board shall take into consideration the fee allowed, if any, by the director, for services before the department, and the board may review the fee fixed by the director. Any attorney's fee set by the department or the board may be reviewed by the superior court upon application of such attorney, worker, beneficiary, or employer. The department, worker, beneficiary, or employer, as the case may be, shall be served a copy of the application and shall be entitled to appear and take part in the proceedings. Where the board, pursuant to this section, fixes the attorney's fee, it shall be unlawful for an attorney to charge or receive any fee for services before the board in excess of that fee fixed by the board.

(5) Any person or entity who violates this section is guilty of a misdemeanor.

**Sec. 14.** RCW 51.52.130 and 1993 c 122 s 1 are each amended to read as follows:

(1) If, on appeal to the superior or appellate court from the decision and order of the board, said decision and order is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained, a reasonable fee for the services of the worker's or beneficiary's attorney shall be fixed by the court. In fixing the fee the court shall take into consideration the fee or fees, if any, fixed by the director and the board for such attorney's services before the department and the board. If the court finds that the fee fixed by the director or by the board is inadequate for services performed before the department or board, or if the director or the board has fixed no fee for such services, then the court shall fix a fee for the attorney's services before the department, or the board, as the case may be, in addition to the fee fixed for the services in the court. If in a worker or beneficiary appeal the decision and order of the board is reversed or modified and if the accident fund or medical aid fund is affected by the litigation, or if in an appeal by the department or employer the worker or beneficiary's right to relief is sustained, or in an appeal by a worker involving a state fund employer with twenty-



five employees or less, in which the department does not appear and defend, and the board order in favor of the employer is sustained, the attorney's fee fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable out of the administrative fund of the department. In the case of self-insured employers, the attorney fees fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable directly by the self-insured employer.

(2) On appeal to the superior or appellate court, a reasonable fee for the services of the employer's attorney shall be fixed by the court if written application therefore is made by the attorney, worker, beneficiary, employer, or Department within one year from the date the judgment is entered. In fixing the fee, the court shall take into consideration the fee or fees, if any, fixed by the director and the board for such attorney's services before the department and the board. If the court finds that the fee fixed by the director or by the board is inadequate for services performed before the department or board, or if the director or the board has fixed no fee for such services, then the court shall fix a fee for the attorney's services before the department, or the board, as the case may be, in addition to the fee fixed for the services in the court.

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

Where the department, the board or the court, pursuant to RCW 51.52.120 or 51.52.130 fixes the attorney's fee, it shall be unlawful for an attorney to charge or receive, and any entity to pay, any fee in excess of that fixed by the department, board, or the court. Any person or entity who violates any provision of this section shall be guilty of a misdemeanor.

NEW SECTION. **Sec. 16.** Sections 8 and 10 of this act expire June 30, 2007.

NEW SECTION. **Sec. 17.** Sections 9 and 11 of this act take effect June 30, 2007.