

70724-8

70724-8

NO. 70724-8-I

**COURT OF APPEALS FOR DIVISION I
STATE OF WASHINGTON**

ANTHONY J. YUCHASZ,

Appellant,

v.

DEPARTMENT OF LABOR & INDUSTRIES,

Respondent.

2013 OCT 14 PM 1:47
COURT OF APPEALS
STATE OF WASHINGTON
CLERK OF COURT

APPELLANT'S BRIEF

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ORIGINAL

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ASSIGNMENT OF ERRORS

ASSIGNMENT OF ERRORS

1. The superior court erred in finding the cost of transportation fuel provided to Mr. Yuchasz by his employer at the time of injury cannot be included as wages under RCW 51.08.178(1). Clerk's Papers [hereinafter CP] at 92 *citing* Superior Court determination No. 3.

ISSUES PERTAINING TO ASSIGNMENT OF ERRORS

1. Did Mr. Yuchasz demonstrate that the costs of transportation fuel provided to him by his employer at the time of injury should have been included as wages under RCW 51.08.178(1) because (1) the common meaning of fuel is gasoline fuel; (2) the Legislative history implies that the Legislature intended for fuel to include fuel for transportation when it revised the wage statute in 1971; and (3) fuel is neither a fringe benefit nor "consideration of like nature" under *Cockle v. Department of Labor & Industries*, 142 Wn.2d 807, 16 P.2d 583 (2001) ?

STATEMENT OF THE CASE

The appellant, Anthony J. Yuchasz, is employed by Computer Power and Service. Declaration of Anthony J. Yuchasz, Certified Appeals Board Record [hereinafter CABR], pp 66-67. He was injured on February 22, 2011, while lifting cables overhead into a bin on the back of a truck. *Id.* At the time of his injury, his wages were \$39.04/hour on a full time basis. *Id.* Mr. Yuchasz's claim was allowed on April 7, 2011, with a time loss rate

of \$121.80 based on gross wages of \$6,531.76 (\$39.04 per hour, 8 hours/day, 4 days a week plus health care costs totaling \$910.00/month). *Id.* Mr. Yuchasz was able to return to work on August 16, 2011, however this was in a light duty position. *Id.*

Prior to his injury, Mr. Yuchasz's job included the use of a company vehicle. Declaration of Kelly Dwyer, CABR pp 92-93. Mr. Yuchasz did not have to pay for the maintenance on this vehicle or for the fuel costs associated with driving it. When Mr. Yuchasz returned to work, his new light duty position did not include the use of a company vehicle and Mr. Yuchasz became responsible for the full expense—maintenance and fuel—of driving his personal vehicle to and from work. *Id.*

On August 24, 2011, Mr. Yuchasz timely protested the wage order of July 26, 2011, and filed a request for adjustment of Loss of Earning Power benefits on October 10, 2011. This order was denied on December 8, 2011. Mr. Yuchasz filed a protest of the denial on December 13, 2011. On March 1, 2013, the Board of Industrial Insurance Appeals affirmed the decision of the Department of Labor and Industries.

Mr. Yuchasz appealed the Board's decision to the King County Superior Court, where a summary judgment hearing was held before the Honorable Judge Michael Hayden on July 12, 2013. Judge Hayden issued

his Order on Summary Judgment in this matter on July 12, 2013. Mr. Yuchasz filed a timely appeal of Judge Hayden's decision to this Court.

SUMMARY OF THE ARGUMENT

This is an issue of first impression in Washington State. To date, the courts have not made a ruling as to what the definition of fuel is under RCW 51.08.178(1). However, the legislative history of the wage statute, combined with public policy and state case law, supports a finding that employer-provided fuel should be included as wages for the purposes of calculating the time loss rate. Additionally, in other jurisdictions where fuel has been included in the wage statute, fuel has been defined as "vehicle fuel" or transportation.

Room and board were previously included in the 1911 wage statute, and there was no need to include fuel as automobiles were not in wide use at the time. Utilities the worker received as wages were already included by way of the term "board." However, when fuel was added in 1971, the automobile was prevalent in the American workplace. Thus, the necessity of workers to travel, combined with the high cost of fuel, make it likely that the Legislature's inclusion of fuel in the 1971 workers'

compensation overhaul was meant to compensate workers for their fuel expenses.

Finally, Washington state case law provides that words be given their ordinary meaning when contrary intent is not manifest. The term “fuel” is both ordinary and unambiguous, and in 1971, at the time of inclusion, fuel would have meant vehicle fuel or gasoline. However, even if the term were to be deemed ambiguous, Title 51 and established workers’ compensation law direct this ambiguity be resolved in favor of the injured worker.

STANDARD OF REVIEW

RCW 51.52.110 and RCW 51.52.115 govern judicial review of matters arising under the Industrial Insurance Act. RCW 51.52.115 states:

The hearing in the superior court shall be de novo, but the court shall not receive evidence or testimony other than, or in addition to, that offered before the board or included in the record filed by the board in the superior court as provided in RCW 51.52.110.... In all court proceedings under or pursuant to this title the findings and decision of the board shall be prima facie correct and the burden of proof shall be upon the party attaching the same. If the court shall determine that the board has acted within its power and has correctly construed the law and found the facts, the decision of the board shall be confirmed....

Judicial review in the Court of Appeals is governed by RCW 51.52.140 which provides an “[a]ppeal shall lie from the judgment of the

superior court as in other civil cases.” *Du Pont v. Labor & Dep’t of Labor & Indus.*, 46 Wn.App. 471, 476, 730 P.2d 1345 (1986). It is the providence of the judicial branch to say what the law is and to determine the purpose and meaning of statutes. *Id.* Statutory interpretation is a question of law and, as such, is reviewed *de novo*. *Cockle v. Dep’t of Labor & Indus.*, 142 Wn.2d 807, 813, 16 P.2d 583 (2001). In reviewing a statute, the primary goal is to carry out the legislative intent behind the statute. *Id.* (citing *Rozner v. City of Bellevue*, 116 Wn.2d 342, 347, 804 P.2d 24 (1991)).

The Court of Appeals reviews the superior court's decision in a workers' compensation appeal *de novo* to determine whether substantial evidence supports its findings and whether its conclusions of law flow from the findings; “substantial evidence” is sufficient to persuade a fair-minded, rational person of the truth of the matter. *Ferencak v. Dep’t of Labor & Indus.*, 142 Wn.App. 713, 175 P.3d 1109 (2008).

The appellate court may substitute its own judgment for that of the agency regarding issues of law. *Ruse v. Dep’t of Labor & Indus.*, 138 Wn.2d 1, 5-6, 977 P.2d 570 (1999). While the court may defer to an agency’s interpretation of a statute, such an interpretation is not binding. *Cockle v. Dep’t of Labor & Indus.*, 142 Wn.2d at 813. Decisions by the Board of Industrial Insurance Appeals that are not designated as

significant decisions are not of precedential value and may not be considered by the appellate court. *O'Keefe v. Dep't of Labor & Indus.*, 126 Wn.App. 760, 767 n. 3, 109 P.3d 484 (2005).

The Industrial Insurance Act (IIA), Title 51 RCW, was designed to provide “sure and certain relief” to injured workers while limiting employer liability for industrial injuries. *Dennis v. Dep't of Labor & Indus.*, 109 Wn.2d 467, 470, 745 P.2d 1295 (1987). “Any doubts or ambiguities in the language of the IIA must be resolved in favor of the injured worker in order to minimize ‘the suffering and economic loss’ that may result from work related injuries.” *Harry v. Buse Timber Sales*, 166 Wn.2d 1, 9, 201 P.3d 1011 (2009) (citing *McIndoe v. Dep't of Labor & Indus.*, 144 Wn.2d 252, 256, 26 P.3d 903 (2001)); *Cockle*, 142 Wn.2d at 811 (‘Where reasonable minds can differ over what Title 51 RCW provisions mean..., the benefit of the doubt belongs to the injured worker.’)

ARGUMENT

A. The issue of how to define fuel under RCW 51.08.178(1) is one of first impression in Washington State and the court should look to the public policy behind the Industrial Insurance Act for guidance.

When the wage statute was enacted in 1971, the new statute stated “the term ‘wages’ shall include the reasonable value of board, housing,

fuel and other consideration of like nature.” RCW 51.08.178(1). The Legislature did not define what “fuel” was, nor did it define “board” or “housing.” While the definition of “other consideration of like nature” has been extensively litigated, the definition of “fuel” has not been litigated at the appellate level until now. *See Cockle, 142 Wn.2d 801; see also Gallo v. Dep’t of Labor & Indus., 155 Wn.2d 470, 120 P.3d 564 (2005).*

In matters of first impression, public policy is particularly important. Title 51’s overarching objective is “reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment.” RCW 51.12.010. It is well established “the guiding principle in construing provisions of the Industrial Insurance Act is that the Act is remedial in nature and is to be liberally construed in order to achieve its purpose of providing compensation to all covered employees injured in their employment, **with doubts resolved in favor of the injured worker.**” *Dennis, 109 Wn.2d at 470 (Emphasis added).*

B. Under RCW 51.08.178(1), Mr. Yuchasz is entitled to have the employer-provided fuel he received included in his total wages for purposes of calculating his time loss rate.

In 1911, the Legislature adopted the Industrial Insurance Act. Exhibit 1 - *Session Laws of the State of Washington, Twelfth Session, 1911, Chapter 74, Codified as RCW 51.* Prior to 1971, all compensation rates were

uniformly fixed by the Legislature. *Cockle*, 142 Wn.2d at 810. Where an occupation comprised different risk classes, the Department was directed to look at “the entire compensation...whether it be in the form of salary, wage, piece work, overtime...and whether payable in **money, board or otherwise.**” Exhibit 1 – *Session Laws of the State of Washington, Twelfth Session, 1911, Chapter 74, Section 4, p. 356* (Emphasis added). However, given the remedial intent of worker’s compensation, the wage calculation was changed by the 1971 Legislature so rather than being compensated by job classification, time loss was to reflect a worker’s actual “lost earning capacity.” *Double D Hop Ranch v. Sanchez*, 133 Wn.2d 793, 798, 947 P.2d 727 (1997). RCW 51.08.178(1) was enacted in 1971, and defined wages as including “the reasonable value of board, housing, **fuel**, or other consideration of like nature received from the employer” (Emphasis added). While “board” had previously been included in the 1911 Legislation, this was the first time the Legislature included “fuel” in the definition of wages.

In 2001, the Washington Supreme Court was asked to interpret the phrase “consideration of like nature” to include health care benefits. Even though the Legislature had not included health care benefits in the 1971 overhaul, the Court held the Legislature had meant to include benefits that are “readily identifiable and reasonably calculable in-kind components of a worker’s lost earning capacity at the time of injury that are critical to

protecting workers' basic health and survival." *Cockle*, 142 Wn.2d at 822. As a consequence, the Court found that health care benefits were "consideration of like nature." This decision was based on the principles espoused in *Dennis* that the Act be remedial in purpose and liberally construed, with **doubts resolved in favor of the worker**. *Dennis*, 109 Wn.2d at 470 (Emphasis added). Although the Legislature did not include "health care" as part of its definition of wages, the Court held that health care was the type of "consideration" the Legislature intended to be included when calculating an injured worker's wages.

Unlike with health care, the issue of whether fuel should be considered in calculating wages is cut and dry. When the Legislature enacted RCW 51.08.178, it included "fuel" in its definition of in-kind wages that could be included in the wage calculation. It did not specify what type of fuel, but merely stated "fuel." It has been argued that fuel pertains to "utilities," but there is nothing in the Legislative record to support this contention. In fact, considering the common definition of "board" or "room and board" is "housing, food and utilities," defining "fuel" to mean utilities creates a redundancy in the statute. US Legal.com defines "room and board" as "lodging, utilities, and food provided for a fee or in exchange for specified duties." U.S. Legal.com, *Room and Board Law & Legal Definition*, (2013), <http://definitions.uslegal.com/r/room-and-board/>; *see also*

Wiki Answers: “Room and board generally includes a place to live and the amenities that come with that (bed, electricity, water, etc.) and food.” Wiki Answers, *What is Included in the Definition of Room and Board*, (2013), http://wiki.answers.com/Q/What_is_included_in_definition_room_and_board. Typically when someone receives “room and board,” that person is receiving housing, food and utilities. The University of Washington student guide defines room and board as including “housing, food and utilities.” University of Washington Office of Admissions, *Total Cost of Attendance*, (2013), <http://admit.washington.edu/Paying/Cost#freshmen-transfer>.

While board was originally included and fuel was not, it is unlikely that the Legislature intended to exclude utilities from the wage calculation in 1911. Utilities would have been included under the definition of “board,” and at the time, the automobile was just a novelty. However, by 1971, when automobiles were in wide use and workers were often provided with company cars or fuel to aid with their work, it is likely the Legislature decided that fuel workers received as part of their compensation should be included in the calculation of the wage rate.

In 1971, the common definition of fuel would have been gasoline, not utilities. When it comes to legislative intent, “one rule of statutory construction is that the court presumes the legislature to be familiar with its own law, including prior subjects of legislation.” *Mason v. Georgia-Pacific*,

166 Wn.App. 859, 271 P.3d 381, 384 (2012) (citing *In re Wissink*, 118 Wn.App. 870, 875, 81 P.3d 865 (2003)). In 1971, had the legislators intended fuel (codified in RCW 51.08.178) to mean only that fuel used to heat a house, they could have simply stated “utilities” or continued to use the term “board.” They did not. Rather, they used the term “fuel,” and gave it its own category, separate from housing and board.

Words are to be given their ordinary meaning when contrary intent is not manifest. *Cockle*, 142 Wn.2d at 808 (citing *Dennis*, 109 Wn.2d at 479-80). In this case, fuel is fuel and the statute does not indicate it is anything more or less. Where a “statute’s meaning is plain on its face, then [the courts] give effect to that plain meaning as an expression of legislative intent.” *Mason*, 271 P.3d at 383 (citing *State ex rel. Citizens Against Tolls (CAT) v. Murphy*, 151 Wn.2d 226, 242, 88 P.3d 375 (2004)). Furthermore, “it is well settled that statutes must not be construed in a manner that renders any portion thereof meaningless or superfluous.” *Cockle*, 142 Wn.2d at 809. However, a determination that “fuel” means “utilities” does just that. *Mason*, 271 P.3d at 383. Based on the clear and unambiguous language of RCW 51.08.178(1), fuel is fuel. It is neither a fringe benefit nor is it “other consideration of like nature. It is simply fuel, and it must be included in the wage calculation.

Even if the term “fuel” is deemed ambiguous, Title 51 and established workers’ compensation case law mandate that “[a]ny doubts and ambiguities in the language of the IIA must be resolved in favor of the injured worker.” *Harry*, 210 P.3d at 1012 (2009); RCW 51.12.010. A narrow definition of “fuel” that includes only heating fuel not only misinterprets the wage statute but also disregards this directive.

In other jurisdictions that have included “fuel” in their wage statutes, “fuel” has been interpreted as “vehicle fuel.” *Motheral v. Workers’ Compensation Appeals Board*, 199 Cal.App.4th 148, 130 Cal. Rptr. 3d 677 (2011). To determine average weekly wage, California Labor Code 4454 states “the market value of board, lodging, fuel and other advantages received by the injured employee” shall be included as wages. Exhibit 2 - *Cal Lab Code §4454*. In 2011, the 3rd Appellate District of the Court of Appeals in California found a worker who received lodging and utilities, as well as a car allowance, should have had the value of all three of these items included in his wage calculation per §4454. *Motheral*, 199 Cal.App.4th at 155. In this case, fuel was interpreted as a car allowance. *See also* Exhibit 3 - *Texas Labor Code §401.011(43)*; and Exhibit 4 - *The State of Texas Employer Wage Statement*.

Not once in the past 42 years has the Legislature sought to narrow the definition of fuel to mean just home heating fuel or utilities. In fact,

while the most recent attempt to amend RCW 51.08.178 excluded health care benefits, retirement benefits, all types of insurance and “consideration of like nature,” the Legislature continued to define wages as including the “actual value of board, housing and **fuel received from the employer as part of a contract for hire.**” Exhibit 5 – *Washington State Senate Bill 5124* (Emphasis added). To paraphrase *Mason*, the term fuel is plain on its face and the court must give effect to that plain meaning as an expression of legislative intent.

C. Under RCW 51.08.178(1), employer provided fuel is not “consideration of a like nature.”

RCW 51.08.178(1) clearly provides “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 contact of hire.” RCW 51.08.178(1) (Emphasis added). “Fuel” is not considered “other consideration of like nature.” Rather, fuel is set out on its own as a specific item, the reasonable value of which shall be included in calculating the injured worker’s wages. Just as “board” and “housing” are considered categories for which a specific value is assigned, so too is fuel. By placing “fuel” alongside “board” and “housing,” the Legislature made the determination that “fuel” is a nonfringe benefit.

As previously discussed, fuel was not originally included in the wage statute, whereas board was. It was not until 1971 that fuel was added, at a time when employees were being provided cars and fuel by their employers as part of the contract for hire. Given the necessity of travel and the high cost of fuel, both in the 1970s and today, it is difficult to argue that fuel is a fringe benefit, and to the extent the *Cockle* decision found that fuel was a part of statute in 1911, this determination is incorrect. *See Cockle v. Department of Labor & Indus.*, 142 Wn.2d at 823 (“[w]e hold that, just as ‘board, housing [and] fuel’ were core, nonfringe benefits critical to protecting the basic health and survival of workers injured in the early 1900s...”). **Fuel was not a part of the Industrial Insurance Act until the late 1900s**, and there is nothing in the Legislative record to indicate “fuel” means anything other than the common definition of fuel, which is gasoline.

D. The Board of Industrial Insurance Appeals’ non-significant decision of *In Re Douglas Brammer*, No. 06 10641 (2007) must be disregarded.

It is well established that decisions that have not been designated by the Board of Industrial Insurance Appeals as significant decisions will not be considered by the appellate court. *O’Keefe v. Dep’t of Labor & Indus.*, 126 Wn.App. 760, 767 n.3, 109 P.3d 484 (2005). To the extent the Superior Court Judge relied on the non-significant decision of *Brammer* as

precedential, this reliance was in error. *In re: Douglas Brammer*, No. 06 10641 (2007).

In addition to being a non-significant decision, the *Brammer* decision is simply incorrect in two respects. First, unlike the phrase, “consideration of a like nature,” “fuel” is a term that does not need interpretation. As the Supreme Court has previously held, words should be given their ordinary meaning when contrary intent is not manifest. *Cockle*, 142 Wn.2d at 808. Since the term “fuel” is not open for interpretation, the Board was incorrect in using ejusdem generis to find that fuel means heating utilities. Ejusdem generis is properly used to interpret phrases such as “consideration of a like nature,” which are general and follow a list of enumerated items. However, ejusdem generis is not to be used to interpret a word that is enumerated and is clear on its face. Second, the Board erred in finding that fuel is a fringe benefit. This holding is in direct contradiction to the Washington State Supreme Court’s decision in *Cockle*, which held that fuel is a “core, nonfringe benefit.” *Cockle*, 142 Wn.2d at 823.

The purpose of Title 51 is to reduce to a minimum the economic loss arising from injuries in the course of employment. RCW 51.12.010. This purpose has not been achieved in Mr. Yuchasz’s case. Prior to his injury, Mr. Yuchasz was receiving fuel benefits, benefits that provided him with the means to get to and from work. Once he returned to work, he no

longer received these benefits even though RCW 51.08.178(1) specifically and clearly states that fuel benefits should be considered as wages. The *Brammer* decision is neither correct nor significant, and it should be disregarded.

ATTORNEYS' FEES AND COSTS

Mr. Yuchasz requests his attorneys' fees and costs pursuant to RAP 18.1 and RCW 51.52.130:

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. [...]

RCW 51.52.130. Further, an award for attorneys' fees under RCW 51.52.130 shall be calculated without regard to the worker's overall recovery on appeal, and shall not exclude fees for work done on unsuccessful claims. *Brand v. Dep't of Labor and Indus.*, 139 Wn.2d 659, 670, 989 P.2d 1111 (1999).

Mr. Yuchasz respectfully requests that should this Court reverse or modify the order of the court below, an award of attorneys' fees and costs incurred before both this Court and the superior court, be specifically ordered.

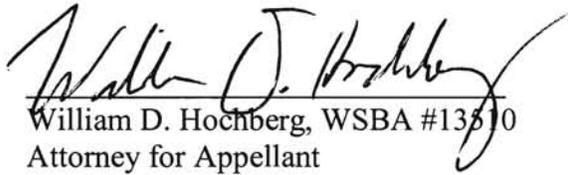
CONCLUSION

Both *Harry* and *Cockle* mandate a liberal reading of the wage statute and any doubts or ambiguities regarding the statute should be resolved in the Mr. Yuchasz's favor. Even if it is determined that the term "fuel" is ambiguous, a liberal interpretation of this term can only result in the conclusion that it is meant to include vehicle fuel or gasoline.

It is without dispute that Mr. Yuchasz drove a company car and that his employer paid to put fuel in that car. This was a benefit of his employment provided by the employer to Mr. Yuchasz. Mr. Yuchasz returned to a light duty job with the same employer and the same driving requirements, however, his employer no longer provided a company car or reimbursement for his fuel costs to and from work. RCW 51.08.178(1) is clear on its face. Wages shall include fuel when it is received from the employer. Based on the common definition of fuel, as well as the holding in *Cockle* and the plain language of RCW 51.08.178(1), Mr. Yuchasz's wage calculation must include the cost of fuel in order to meet the objective in our workers' compensation statute of replacing an injured worker's lost earning capacity.

Respectfully submitted this 11 day of October, 2013.

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APPENDIX

Session Laws of the State of Washington, Twelfth Session, 1911,
Chapter 74, Codified as RCW 51 Exhibit 1

California Labor Code §4454 Exhibit 2

Texas Labor Code §401.011 Exhibit 3

The State of Texas Employer Wage Statement..... Exhibit 4

Washington State Senate Bill 5124..... Exhibit 5

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RCW 51.52.115Exhibit 9

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CHAPTER 74.

[H. B. 14.]

RELATING TO COMPENSATION OF INJURED WORKMEN.

AN ACT relating to the compensation of injured workmen in our industries, and the compensation to their dependents where such injuries result in death, creating an industrial insurance department, making an appropriation for its administration, providing for the creation and disbursement of funds for the compensation and care of workmen injured in hazardous employment, providing penalties for the non-observance of regulations for the prevention of such injuries and for violation of its provisions, asserting and exercising the police power in such cases, and, except in certain specified cases, abolishing the doctrine of negligence as a ground for recovery of damages against employers, and depriving the courts of jurisdiction of such controversies, and repealing sections 6594, 6595, and 6596 of Remington and Ballinger's Annotated Codes and Statutes of Washington, relating to employes in factories, mills or workshops where machinery is used, actions for the recovery of damages and prescribing a punishment for the violation thereof.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. *Declaration of Police Power.*

The common law system governing the remedy of workmen against employers for injuries received in hazardous work is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workman and that little only at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage-worker. The State of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extra hazardous work, and their families and dependents is hereby provided regardless of questions of fault and to

Declaration.

Exercise
police
powers.

the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this act provided.

SEC. 2. *Enumeration of Extra Hazardous Works.*

There is a hazard in all employment, but certain employments have come to be, and to be recognized as being inherently constantly dangerous. This act is intended to apply to all such inherently hazardous works and occupations, and it is the purpose to embrace all of them, which are within the legislative jurisdiction of the state, in the following enumeration, and they are intended to be embraced within the term "extra hazardous" wherever used in this act, to-wit:

Extra
hazardous
employment.

Factories, mills and workshops where machinery is used; printing, electrotyping, photo-engraving and stereotyping plants where machinery is used; foundries, blast furnaces, mines, wells, gas works, waterworks, reduction works, breweries, elevators, wharves, docks, dredges, smelters, powder works; laundries operated by power; quarries; engineering works; logging, lumbering and ship building operations; logging, street and interurban railroads; buildings being constructed, repaired, moved or demolished; telegraph, telephone, electric light or power plants or lines, steam heating or power plants, steamboats, tugs, ferries and railroads. If there be or arise any extra hazardous occupation or work other than those hereinabove enumerated, it shall come under this act, and its rate of contribution to the accident fund hereinafter established, shall be, until fixed by legislation, determined by the department hereinafter created, upon the basis of the relation which the risk involved bears to the risks classified in section 4.

SEC. 3. *Definitions.*

In the sense of this act words employed mean as here stated, to-wit:

Factories mean undertakings in which the business of

working at commodities is carried on with power-driven machinery, either in manufacture, repair or change, and shall include the premises, yard and plant of the concern.

Defining
terms.

Workshop means any plant, yard, premises, room or place wherein power-driven machinery is employed and manual labor is exercised by way of trade for gain or otherwise in or incidental to the process of making, altering, repairing, printing or ornamenting, finishing or adapting for sale or otherwise any article or part of article, machine or thing, over which premises, room or place the employer of the person working therein has the right of access or control.

Workshop.

Mill means any plant, premises, room or place where machinery is used, any process of machinery, changing, altering or repairing any article or commodity for sale or otherwise, together with the yards and premises which are a part of the plant, including elevators, warehouses and bunkers.

Mill.

Mine means any mine where coal, clay, ore, mineral, gypsum or rock is dug or mined underground.

Mine.

Quarry means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, gravel or rock is cut or taken for manufacturing, building or construction purposes.

Quarry.

Engineering work means any work of construction, improvement or alteration or repair of buildings, structures, streets, highways, sewers, street railways, railroads, logging roads, interurban railroads, harbors, docks, canals; electric, steam or water power plants; telegraph and telephone plants and lines; electric light or power lines, and includes any other works for the construction, alteration or repair of which machinery driven by mechanical power is used.

Engineering.

Except when otherwise expressly stated, employer means any person, body of persons, corporate or otherwise, and the legal personal representatives of a deceased employer, all while engaged in this state in any extra hazardous work.

Employer.

Workman means every person in this state, who, after

Workman.

September 30, 1911, is engaged in the employment of an employer carrying on or conducting any of the industries scheduled or classified in section 4, whether by way of manual labor or otherwise, and whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer: *Provided, however,* That if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children, or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit under this section; and if he take under this act, the cause of action against such other shall be assigned to the state for the benefit of the accident fund; if the other choice is made, the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case. Any such cause of action assigned to the state may be prosecuted, or compromised by the department, in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

Benefits
to whom.

Any individual employer or any member or officer of any corporate employer who shall be carried upon the pay roll at a salary or wage not less than the average salary or wage named in such pay roll and who shall be injured, shall be entitled to the benefit of this act as and under the same circumstances as and subject to the same obligations as a workman.

Dependent.

Dependent means any of the following named relatives of a workman whose death results from any injury and who leaves surviving no widow, widower, or child under the age of sixteen years, viz.: invalid child over the age of sixteen years, daughter, between sixteen and eighteen years of age, father, mother, grandfather, grandmother, step-father,

step-mother, grandson, granddaughter, step-son, step-daughter, brother, sister, half-sister, half-brother, niece, nephew, who, at the time of the accident, are dependent, in whole or in part, for their support upon the earnings of the workman. Except where otherwise provided by treaty, aliens, other than father or mother, not residing within the United States at the time of the accident, are not included.

Beneficiary means a husband, wife, child or dependent of a workman, in whom shall vest a right to receive payment under this act. Beneficiary.

Invalid means one who is physically or mentally incapacitated from earning. Invalid.

The word "child," as used in this act, includes a post-humous child, a child legally adopted prior to the injury, and an illegitimate child legitimated prior to the injury. Child.

The words injury or injured, as used in this act, refer only to an injury resulting from some fortuitous event as distinguished from the contraction of disease. Injury.

SEC. 4. *Schedule of Contribution.*

Insomuch as industry should bear the greater portion of the burden of the cost of its accidents, each employer shall, prior to January 15th of each year, pay into the state treasury, in accordance with the following schedule, a sum equal to a percentage of his total pay roll for that year, to-wit: (the same being deemed the most accurate method of equitable distribution of burden in proportion to relative hazard): Schedule of costs.

CONSTRUCTION WORK.

Tunnels; bridges; trestles; sub-aqueous works; ditches and canals (other than irrigation without blasting); dock excavation; fire escapes; sewers; house moving; house wrecking065	
Iron, or steel frame structures or parts of structures.....	.080	Schedule as applied.
Electric light or power plants or systems; telegraph or telephone systems; pile driving; steam railroads.....	.050	
Steeple, towers or grain elevators, not metal framed; dry-docks without excavation; jetties; breakwaters; chimneys; marine railways; waterworks or systems; electric railways with rock work or blasting; blasting; erecting fireproof doors or shutters.....	.050	

Steam heating plants; tanks, water towers or windmills, not metal frames.....	.040
Shaft sinking060
Concrete buildings; freight or passenger elevators; fireproofing of buildings; galvanized iron or tin works; gas works, or systems; marble, stone or brick work; road making with blasting; roof work; safe moving; slate work; outside plumbing work; metal smokestacks or chimneys050
Excavations not otherwise specified; blast furnaces.....	.040
Street or other grading; cable or electric street railways without blasting; advertising signs; ornamental metal work in buildings.....	.035
Ship or boat building or wrecking with scaffolds; floating docks045
Carpenter work not otherwise specified.....	.035
Installation of steam boilers or engines; placing wire in conduits; installing dynamos; putting up belts for machinery; marble, stone or tile setting, inside work; mantle setting; metal ceiling work; mill or ship wrighting; painting of buildings or structures; installation of automatic sprinklers; ship or boat rigging; concrete laying in floors, foundations or street paving; asphalt laying; covering steam pipes or boilers; installation of machinery not otherwise specified.....	.030
Drilling wells; installing electrical apparatus or fire alarm systems in buildings; house heating or ventilating systems; glass setting; building hot houses; lathing; paper hanging; plastering; inside plumbing; wooden stair building; road making.....	.020

OPERATION (INCLUDING REPAIR WORK) OF

(All combinations of material take the higher rate when not otherwise provided).

Operation,
repair work.

Logging railroads; railroads; dredges; interurban electric railroads using third rail system; dry or floating docks.	.050
Electric light or power plants; interurban electric railroads not using third rail system; quarries.....	.040
Street railways, all employees; telegraph or telephone systems; stone crushing; blasting furnaces; smelters; coal mines; gas works; steamboats; tugs; ferries.....	.030
Mines, other than coal; steam heating or power plants.....	.025
Grain elevators; laundries; waterworks; paper or pulp mills; garbage works.....	.020

FACTORIES USING POWER-DRIVEN MACHINERY.

Factories.

Stamping tin or metal.....	.045
Bridge work; railroad car or locomotive making or repairing; cooperage; logging with or without machinery; saw mills; shingle mills; staves; veneer; box; lath; pack-	

ing cases; sash, door or blinds; barrel; keg; pail; basket; tub; wooden ware or wooden fibre ware; rolling mills; making steam shovels or dredges; tanks; water towers; asphalt; building material not otherwise specified; fertilizer; cement; stone with or without machinery; kindling wood; masts and spars with or without machinery; canneries, metal stamping extra; creosoting works; pile treating works..... .025

Excelsior; iron, steel, copper, zinc, brass or lead articles or wares not otherwise specified; working in wood not otherwise specified; hardware; tile; brick; terra cotta; fire clay; pottery; earthenware; porcelain ware; peat fuel; brickettes020

Breweries; bottling works; boiler works; foundries; machine shops not otherwise specified..... .020

Cordage; working in food stuffs, including oils, fruits and vegetables; working in wool, cloth, leather, paper, broom, brush, rubber or textiles not otherwise specified. .015

Making jewelry, soap, tallow, lard, grease, condensed milk. .015

Creameries; printing; electrotyping; photo-engraving; engraving; lithographing015

MISCELLANEOUS WORK.

Stevedoring; longshoring030

Operating stock yards, with or without railroad entry; packing houses025

Wharf operation; artificial ice, refrigerating or cold storage plants; tanneries; electric systems not otherwise specified .020

Theater stage employes..... .015

Fire works manufacturing..... .050

Powder works100

Miscellaneous.

The application of this act as between employers and workmen shall date from and include the first day of October, 1911. The payment for 1911 shall be made prior to the day last named, and shall be preliminarily collected upon the pay roll of the last preceding three months of operation. At the end of each year an adjustment of accounts shall be made upon the basis of the actual pay roll. Any shortage shall be made good on or before February 1st, following. Every employer who shall enter into business at any intermediate day shall make his payment for the initial year or portion thereof before commencing operation; its amount shall be calculated upon his estimated pay roll, an adjustment shall be made on or before February 1st of the following year in the manner above provided.

Use pay roll of three months prior.

Shortage made good.

Premiums,
when paid.

For the purpose of such payments accounts shall be kept with each industry in accordance with the classification herein provided and no class shall be liable for the depletion of the accident fund from accidents happening in any other class. Each class shall meet and be liable for the the accidents occurring in such class. There shall be collected from each class as an initial payment into the accident fund as above specified on or before the 1st day of October, 1911, one-fourth of the premium of the next succeeding year, and one-twelfth thereof at the close of each month after December, 1911: *Provided*, Any class having sufficient funds credited to its account at the end of the first three months or any month thereafter, to meet the requirements of the accident fund, that class shall not be called upon for such month. In case of accidents occurring in such class after lapsed payment or payments said class shall pay the said lapsed or deferred payments commencing at the first lapsed payment, as may be necessary to meet such requirements of the accident fund.

Accident
fund.

The fund thereby created shall be termed the "accident fund" which shall be devoted exclusively to the purpose specified for it in this act.

In that the intent is that the fund created under this section shall ultimately become neither more or less than self-supporting, exclusive of the expense of administration, the rates in this section named are subject to future adjustment by the legislature, and the classifications to rearrangement following any relative increase or decrease of hazard shown by experience.

Deductions
from wages
unlawful.

It shall be unlawful for the employer to deduct or obtain any part of the premium required by this section to be by him paid from the wages or earnings of his workmen or any of them, and the making or attempt to make any such deduction shall be a gross misdemeanor. If, after this act shall have come into operation, it is shown by experience under the act, because of poor or careless management, any establishment or work is unduly dangerous in comparison with other like establishments or works, the department

may advance its classification of risks and premium rates in proportion to the undue hazard. In accordance with the same principle, any such increase in classification or premium rate, shall be subject to restoration to the schedule rate. Any such change in classification of risks or premium rates, or any change caused by change in the class of work, occurring during the year shall, at the time of the annual adjustment, be adjusted by the department in proportion to its duration in accordance with the schedule of this section. If, at the end of any year, it shall be seen that the contribution to the accident fund by any class of industry shall be less than the drain upon the fund on account of that class, the deficiency shall be made good to the fund on the 1st day of February of the following year by the employers of that class in proportion to their respective payments for the past year.

May advance classification.

Deficiency made good.

For the purposes of such payment and making good of deficit the particular classes of industry shall be as follows:

CONSTRUCTION WORK.

Class 1. Tunnels; sewer; shaft sinking; drilling wells.

Class 2. Bridges; mill wrighting; trestles; steeples, towers or grain elevators not metal framed; tanks, water towers, wind-mills not metal framed.

Construction work.

Class 3. Sub-aqueous works; canal other than irrigation or docks with or without blasting; pile driving; jetties; breakwaters; marine railways.

Class 4. House moving; house wrecking; safe moving.

Class 5. Iron or steel frame structures or parts of structures; fire escapes; erecting fire-proof doors or shutters; blast furnaces; concrete chimneys; freight or passengers elevators; fire proofing of buildings; galvanized iron or tin work; marble, stone or brick work; roof work; slate work; plumbing work; metal smoke stack or chimneys; advertising signs; ornamental metal work in buildings; carpenter work not otherwise specified; marble, stone or tile setting; mantle setting; metal ceiling work; painting of buildings or structures; concrete laying in floors or

Classes named and numbered.

foundations; glass setting; building hot houses; lathing; paper hanging; plastering; wooden stair building.

Class 6. Electric light and power plants or system; telegraph or telephone systems; cable or electric railways with or without rock work or blasting; waterworks or systems; steam heating plants; gas works or systems; installation of steam boilers or engines; placing wires in conduits; installing dynamos; putting up belts for machinery; installation of automatic sprinklers; covering steam pipes or boilers; installation of machinery not otherwise specified; installing electrical apparatus or fire alarm systems in buildings; house heating or ventilating systems.

Class 7. Steam railroads; logging railroads.

Class 8. Road making; street or other grading; concrete laying in street paving; asphalt laying.

Class 9. Ship or boat building with scaffolds; shipwrighting; ship or boat rigging; floating docks.

OPERATION (INCLUDING REPAIR WORK) OF

Class 10. Logging; saw mills; shingle mills; lath mills; lath mills; masts and spars with or without machinery.

Class 12. Dredges; dry or floating docks.

Class 13. Electric light or power plants or systems; steam heat or power plants or systems; electric systems not otherwise specified.

Class 14. Street railways.

Class 15. Telegraph systems; telephone systems.

Class 16. Coal mines.

Class 17. Quarries; stone crushing; mines other than coal.

Class 18. Blast furnaces; smelters; rolling mills.

Class 19. Gas works.

Class 20. Steamboats; tugs; ferries.

Class 21. Grain elevators.

Class 22. Laundries.

Class 23. Water works.

Class 24. Paper or pulp mills.

Class 25. Garbage works; fertilizer.

Classes
continued.

FACTORIES (USING POWER-DRIVEN MACHINERY).

- Class 26. Stamping tin or metal. Factories.
- Class 27. Bridge work; making steam shovels or dredges; tanks; water towers.
- Class 28. Railroad car or locomotive making or repairing.
- Class 29. Cooperage; staves; veneer; box; packing cases; sash[,] door or blinds; barrel; keg; pail; basket; tub; wood ware or wood fibre ware; kindling wood; excelsior; working in wood not otherwise specified.
- Class 30. Asphalt.
- Class 31. Cement; stone with or without machinery; building material not otherwise specified.
- Class 32. Canneries of fruits or vegetables.
- Class 33. Canneries of fish or meat products.
- Class 34. Iron, steel, copper, zinc, brass or lead articles or wares; hardware; boiler works; foundries; machine shops not otherwise specified.
- Class 35. Tile; brick; terra cotta; fire clay; pottery; earthenware; porcelain ware.
- Class 36. Peat fuel; brickettes.
- Class 37. Breweries; bottling works.
- Class 38. Cordage; working in wool, cloth, leather, paper, brush, rubber or textile not otherwise specified.
- Class 39. Working in food stuffs, including oils, fruits, Classification.
vegetables.
- Class 40. Condensed milk; creameries.
- Class 41. Printing; electrotyping; photo-engraving; engraving; lithographing; making jewelry.
- Class 42. Stevedoring; longshoring; wharf operation.
- Class 43. Stock yards; packing houses; making soap, tallow, lard, grease; tanneries.
- Class 44. Artificial ice, refrigerating or cold storage plants.
- Class 45. Theater stage employees.
- Class 46. Fire works manufacturing; powder works.
- Class 47. Creosoting works; pile treating works.

Average
rate, when.

If a single establishment or work comprises several occupations listed in this section in different risk classes, the premium shall be computed according to the pay roll of each occupation if clearly separable; otherwise an average rate of premium shall be charged for the entire establishment, taking into consideration the number of employes and the relative hazards. If an employer besides employing workmen in extra hazardous employment shall also employ workmen in employments not extra hazardous the provisions of this act shall apply only to the extra hazardous departments and employments and the workmen employed therein. In computing the pay roll the entire compensation received by every workman employed in extra hazardous employment shall be included, whether it be in the form of salary, wage, piece work, overtime, or any allowance in the way of profit-sharing, premium or otherwise, and whether payable in money, board, or otherwise.

SEC. 5. *Schedule of Awards.*

Awards.

Each workman who shall be injured whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and, except as in this act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever.

COMPENSATION SCHEDULE.

Schedule of
compensation.

(a) Where death results from the injury the expenses of burial shall be paid in all cases, not to exceed \$75.00 in any case, and

(1) If the workman leaves a widow or invalid widower, a monthly payment of \$20.00 shall be made throughout the life of the surviving spouse, to cease at the end of the month in which remarriage shall occur; and the surviving spouse shall also receive \$5.00 per month for each child of the deceased under the age of sixteen years at time of the occurrence of the injury until such minor child shall

reach the age of sixteen years, but the total monthly payment under this paragraph (1) of subdivision (a) shall not exceed \$35.00. Upon remarriage of a widow she shall receive, once and for all, a lump sum equal to twelve times her monthly allowance, viz.: the sum of \$240.00, but the monthly payment for the child or children shall continue as before.

(2) If the workman leaves no wife or husband, but a child or children under the age of sixteen years, a monthly payment of \$10.00 shall be made to each such child until such child shall reach the age of sixteen years, but the total monthly payment shall not exceed \$35.00, and any deficit shall be deducted proportionately among the beneficiaries.

Paid to
children.

(3) If the workman leaves no widow, widower, or child under the age of sixteen years, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty per cent. of the average monthly support actually received by such dependent from the workman during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed \$20.00 per month. If any dependent is under the age of sixteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent shall reach the age of sixteen years. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

Paid to
dependents.

If the workman is under the age of twenty-one years and unmarried at the time of his death, the parents or parent of the workman shall receive \$20.00 per month for each month after his death until the time at which he would have arrived at the age of twenty-one years.

Paid to
parents.

(4) In the event a surviving spouse receiving monthly payments shall die, leaving a child or children under the age of sixteen years, the sum he or she shall be receiving on account of such child or children shall be thereafter,

Paid to
children.

until such child shall arrive at the age of sixteen years, paid to the child increased 100 per cent., but the total to all children shall not exceed the sum of thirty-five dollars per month.

Permanent
total
disability.

(b) Permanent total disability means the loss of both legs or both arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the workman from performing any work at any gainful occupation.

When permanent total disability results from the injury the workman shall receive monthly during the period of such disability:

Classifica-
tion.

(1) If unmarried at the time of the injury, the sum of \$20.00.

(2) If the workman have a wife or invalid husband, but no child under the age of sixteen years, the sum of \$25.00. If the husband is not an invalid, the monthly payment of \$25.00 shall be reduced to \$15.00.

(3) If the workman have a wife or husband and a child or children under the age of sixteen years, or, being a widow or widower, have any such child or children, the monthly payment provided in the preceding paragraph shall be increased by five dollars for each such child until such child shall arrive at the age of sixteen years, but the total monthly payment shall not exceed thirty-five dollars.

Death of
injured.

(c) If the injured workman die during the period of total disability, whatever the cause of death, leaving a widow, invalid widower or child under the age of sixteen years, the surviving widow or invalid widower shall receive twenty dollars per month until death or remarriage, to be increased five dollars per month for each child under the age of sixteen years until such child shall arrive at the age of sixteen years; but if such child is or shall be without father or mother, such child shall receive ten dollars per month until arriving at the age of sixteen years. The total combined monthly payment under this paragraph shall in no case exceed thirty-five dollars. Upon remar-

riage the payments on account of a child or children shall continue as before to the child or children.

(d) When the total disability is only temporary, the schedule of payment contained in paragraphs (1), (2) and (3) of the foregoing subdivision (d) shall apply so long as the total disability shall continue, increased 50 per cent. for the first six months of such continuance, but in no case shall the increase operate to make the monthly payment exceed sixty per cent. of the monthly wage (the daily wage multiplied by twenty-six) the workman was receiving at the time of his injury. As soon as recovery is so complete that the present earning power of the workman, at any kind of work, is restored to that existing at the time of the occurrence of the injury the payments shall cease. If and so long as the present earning power is only partially restored the payments shall continue in the proportion which the new earning power shall bear to the old. No compensation shall be payable out of the accident fund unless the loss of earning power shall exceed five per cent.

Temporary
total
disability.

From acci-
dent fund,
when.

(e) For every case of injury resulting in death or permanent total disability it shall be the duty of the department to forthwith notify the state treasurer, and he shall set apart out of the accident fund a sum of money for the case, to be known as the estimated lump value of the monthly payments provided for it, to be calculated upon the theory that a monthly payment of twenty dollars, to a person thirty years of age, is equal to a lump sum payment, according to the expectancy of life as fixed by the American Mortality Table, of four thousand dollars, but the total in no case to exceed the sum of four thousand dollars. The state treasurer shall invest said sum at interest in the class of securities provided by law for the investment of the permanent school fund, and out of the same and its earnings shall be paid the monthly installments and any lump sum payment then or thereafter arranged for the case. Any deficiency shall be made good out of, and any balance or overplus shall revert to the

Notify state
treasurer.

Treasurer
keep ac-
count.

accident fund. The state treasurer shall keep accurate account of all such segregations of the accident fund, and may borrow from the main fund to meet monthly payments pending conversion into cash of any security, and in such case shall repay such temporary loan out of the cash realized from the security.

Defining per-
manent par-
tial dis-
ability.

(f) Permanent partial disability means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where legaments are severed, or any other injury known in surgery to be permanent partial disability. For any permanent partial disability resulting from an injury, the workman shall receive compensation in a lump sum in an amount equal to the extent of the injury, to be decided in the first instance by the department, but not in any case to exceed the sum of \$1,500.00. The loss of one major arm at or above the elbow shall be deemed the maximum permanent partial disability. Compensation for any other permanent partial disability shall be in the proportion which the extent of such disability shall bear to the said maximum. If the injured workman be under the age of twenty-one years and unmarried, the parents or parent shall also receive a lump sum payment equal to ten per cent. of the amount awarded the minor workman.

Additional
injury.

(g) Should a further accident occur to a workman already receiving a monthly payment under this section for a temporary disability, or who has been previously the recipient of a lump sum payment under this act, his future compensation shall be adjusted according to the other provisions of this section and with regard to the combined effect of his injuries, and his past receipt of money under this act.

May readjust
rate.

(h) If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated in any case the department may, upon the application of the beneficiary or upon its own motion, readjust for future application the rate of compensation in

accordance with the rules in this section provided for the same, or in a proper case terminate the payments.

(i) A husband or wife of an injured workman, living in a state of abandonment for more than one year at the time of the injury or subsequently, shall not be a beneficiary under this act. Not under act, when.

(j) If a beneficiary shall reside or remove out of the state the department may, in its discretion, convert any monthly payments provided for such case into a lump sum payment (not in any case to exceed \$4,000.00) upon the theory, according to the expectancy of life as fixed by the American Mortality Table, that a monthly payment of \$20.00 to a person thirty years of age is worth \$4,000.00, or, with the consent of the beneficiary, for a smaller sum. Maximum payment.

(k) Any court review under this section shall be initiated in the county where the workman resides or resided at the time of the injury, or in which the injury occurred.

SEC. 6. *Intentional Injuries—Status of Minors.*

If injury or death results to a workman from the deliberate intention of the workman himself to produce such injury or death, neither the workman nor the widow, widower, child or dependent of the workman shall receive any payment whatsoever out of the accident fund. If injury or death results to a workman from the deliberate intention of his employer to produce such injury or death, the workman, the widow, widower, child or dependent of the workman shall have the privilege to take under this act and also have cause of action against the employer, as if this act had not been enacted, for any excess of damage over the amount received or receivable under this act. Intentional injurv.

A minor working at an age legally permitted under the laws of this state shall be deemed *sui juris* for the purpose of this act, and no other person shall have any cause of action or right to compensation for an injury to such minor workman except as expressly provided in this act, but in the event of a lump sum payment becoming due Minor workman.

under this act to such minor workman, the management of the sum shall be within the probate jurisdiction of the courts the same as other property of minors.

SEC. 7. *Conversion into Lump Sum Payment.*

Lump sum
payment.

In case of death or permanent total disability the monthly payment provided may be converted, in whole or in part, into a lump sum payment (not in any case to exceed \$4,000.000), on the theory, according to the expectancy of life as fixed by the American Mortality Table, that a monthly payment of \$20.00 to a person thirty years of age is worth the sum of \$4,000.00, in which event the monthly payment shall cease in whole or in part accordingly or proportionately. Such conversion may only be made after the happening of the injury and upon the written application of the beneficiary (in case of minor children, the application may be by either parent) to the department, and shall rest in the discretion of the department. Within the rule aforesaid the amount and value of the lump sum payment may be agreed upon between the department and the beneficiary.

SEC. 8. *Defaulting Employers.*

Employer
defaulting.

If any employer shall default in any payment to the accident fund hereinbefore in this act required, the sum due shall be collected by action at law in the name of the state as plaintiff, and such right of action shall be in addition to any other right of action or remedy. In respect to any injury happening to any of his workmen during the period of any default in the payment of any premium under section 4, the defaulting employer shall not, if such default be after demand for payment, be entitled to the benefits of this act, but shall be liable to suit by the injured workman (or the husband, wife, child or dependent of such workman in case death result from the accident), as he would have been prior to the passage of this act.

Collecting
in excess.

In case the recovery actually collected in such suit shall equal or exceed the compensation to which the plaintiff therein would be entitled under this act, the plaintiff shall not be paid anything out of the accident fund; if the

said amount shall be less than such compensation under this act, the accident fund shall contribute the amount of the deficiency. The person so entitled under the provisions of this section to sue shall have the choice (to be exercised before suit) of proceeding by suit or taking under this act. If such person shall take under this act, the cause of action against the employer shall be assigned to the state for the benefit of the accident fund. In any suit brought upon such cause of action the defense of fellow servant and assumption of risk shall be inadmissible, and the doctrine of comparative negligence shall obtain. Any such cause of action assigned to the state may be prosecuted or compromised by the department in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

Compromise
only on
approval.

SEC. 9. *Employer's Responsibility for Safeguard.*

If any workman shall be injured because of the absence of any safeguard or protection required to be provided or maintained by, or pursuant to, any statute or ordinance, or any departmental regulation under any statute, or be, at the time of the injury, of less than the maximum age prescribed by law for the employment of a minor in the occupation in which he shall be engaged when injured, the employer shall, within ten days after demand therefor by the department, pay into the accident fund, in addition to the same required by section 4 to be paid:

Responsibility
for safe-
guard.

(a) In case the consequent payment to the workman out of the accident fund be a lump sum, a sum equal to 50 per cent. of that amount.

(b) In case the consequent payment to the workman be payable in monthly payments, a sum equal to 50 per cent. of the lump value of such monthly payment, estimated in accordance with the rule stated in section 7.

The foregoing provisions of this act shall not apply to the employer if the absence of such guard or protection be due to the removal thereof by the injured workman

Not applied,
when.

himself or with his knowledge by any of his fellow workmen, unless such removal be by order or direction of the employer or superintendent or foreman of the employer, or any one placed by the employer in control or direction of such workman. If the removal of such guard or protection be by the workman himself or with his consent by any of his fellow workmen, unless done by order or direction of the employer or the superintendent or foreman of the employer, or any one placed by the employer in control, or direction of such workman, the schedule of compensation provided in section 5 shall be reduced 10 per cent. for the individual case of such workman.

SEC. 10. *Exemption of Awards.*

No money paid or payable under this act out of the accident fund shall, prior to issuance and delivery of the warrant therefor, be capable of being assigned, charged, nor ever be taken in execution or attached or garnished, nor shall the same pass to any other person by operation of law. Any such assignment or charge shall be void.

SEC. 11. *Non-Waiver of Act by Contract.*

No employer or workman shall exempt himself from the burden or waive the benefits of this act by any contract, agreement, rule or regulation, and any such contract, agreement, rule or regulation shall be *pro tanto* void.

SEC. 12. *Filing Claim for Compensation.*

(a) Where a workman is entitled to compensation under this act he shall file with the department, his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this act and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the workman.

(b) Where death results from injury the parties entitled to compensation under this act, or some one in their behalf, shall make application for the same to the department, which application must be accompanied with proof

Cannot
contract
waiver.

File appli-
cation and
certificate.

Application
to depart-
ment.

of death and proof of relationship showing the parties to be entitled to compensation under this act, certificates of attending physician, if any, and such other proof as required by the rules of the department.

(c) If change of circumstance warrant an increase or rearrangement of compensation, like application shall be made therefor. No increase or rearrangement shall be operative for any period prior to application therefor.

(d) No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the right thereto accrued.

Must file
within one
year.

SEC. 13. *Medical Examination.*

Any workman entitled to receive compensation under this act is required, if requested by the department, to submit himself for medical examination at a time and from time to time at a place reasonably convenient for the workman and as may be provided by the rules of the department. If the workman refuses to submit to any such examination, or obstructs the same, his rights to monthly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period:

Medical ex-
amination.

SEC. 14. *Notice of Accident.*

Whenever any accident occurs to any workman it shall be the duty of the employer to at once report such accident and the injury resulting therefrom to the department, and also to any local representative of the department. Such report shall state:

Report to de-
partment.

1. The time, cause and nature of the accident and injuries, and the probable duration of the injury resulting therefrom.

2. Whether the accident arose out of or in the course of the injured person's employment.

3. Any other matters the rules and regulations of the department may prescribe.

SEC. 15. *Inspection of Employer's Books.*

The books, records and pay rolls of the employer pertinent to the administration of this act shall always be

Inspection
of books.

open to inspection by the department or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the pay roll, the men employed, and such other information as may be necessary for the department and its management under this act. Refusal on the part of the employer to submit said books, records and pay rolls for such inspection to any member of the commission, or any assistant presenting written authority from the commission, shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the state and paid into the accident fund, and the individual who shall personally give such refusal shall be guilty of a misdemeanor.

SEC. 16. *Penalty for Misrepresentation as to Pay Roll.*

Misrepresenta-
tion—
penalty.

Any employer who shall misrepresent to the department the amount of pay roll upon which the premium under this act is based shall be liable to the state in ten times the amount of the difference in premium paid and the amount the employer should have paid. The liability to the state under this section shall be enforced in a civil action in the name of the state. All sums collected under this section shall be paid into the accident fund.

SEC. 17. *Public and Contract Work.*

Public and
contract
work.

Whenever the state, county or any municipal corporation shall engage in any extra hazardous work in which workmen are employed for wages, this act shall be applicable thereto. The employer's payments into the accident fund shall be made from the treasury of the state, county or municipality. If said work is being done by contract, the pay roll of the contractor and the sub-contractor shall be the basis of computation, and in the case of contract work consuming less than one year in performance the required payment into the accident fund shall be based upon the total pay roll. The contractor and any sub-contractor shall be subject to the provisions of the act, and the state for its general fund, the county or municipal corporation shall be entitled to collect from the contractor the full amount payable to the accident fund, and the con-

tractor, in turn shall be entitled to collect from the subcontractor his proportionate amount of the payment. The provisions of this section shall apply to all extra hazardous work done by contract, except that in private work the contractor shall be responsible, primarily and directly, to the accident fund for the proper percentage of the total pay roll of the work and the owner of the property affected by the contract shall be surety for such payments. Whenever and so long as, by state law, city charter or municipal ordinance, provision is made for municipal employes injured in the course of employment, such employes shall not be entitled to the benefits of this act and shall not be included in the pay roll of the municipality under this act.

Surety for
payments.

SEC. 18. *Interstate Commerce.*

The provisions of this act shall apply to employers and workmen engaged in intrastate and also in interstate or foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the Congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, except that any such employer and any of his workmen working only in this state may, with the approval of the department, and so far as not forbidden by any act of Congress, voluntarily accept the provisions of this act by filing written acceptances with the department. Such acceptances, when filed with and approved by the department, shall subject the acceptors irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms. Payment of premium shall be on the basis of the payroll of the workmen who accept as aforesaid.

Interstate
commerce.

SEC. 19. *Elective Adoption of Act.*

Any employer and his employes engaged in works not extra hazardous may, by their joint election, filed with the department, accept the provisions of this act, and such acceptances, when approved by the department, shall sub-

ject them irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms. Ninety per cent. of the minimum rate specified in section 4 shall be applicable to such case until otherwise provided by law.

Per cent.
applicable.

SEC. 20. *Court Review.*

Any employer, workman, beneficiary, or person feeling aggrieved at any decision of the department affecting his interests under this act may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, initiated in the superior court of the county of his residence (except as otherwise provided in subdivision (1) of section numbered 5) in so far as such decision rests upon questions of fact, or of the proper application of the provisions of this act, it being the intent that matters resting in the discretion of the department shall not be subject to review. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. No such appeal shall be entertained unless notice of appeal shall have been served by mail or personally upon some member of the commission within twenty days following the rendition of the decision appealed from and communication thereof to the person affected thereby. No bond shall be required, except that on appeal by the employer from a decision of the department under section 9 shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay. The calling of a jury shall rest in the discretion of the court except that in cases arising under sections 9, 15 and 16 either party shall be entitled to a jury trial upon demand. It shall be unlawful for any attorney engaged in any such appeal to charge or receive any fee therein in excess of a reasonable fee, to be fixed by the court in the case, and, if the decision of the department shall be reversed or modified, such fee and the fees of

Opportunity
for hearing.

Bond filed.

medical and other witnesses and the costs shall be payable out of the administration fund, if the accident fund is affected by the litigation. In other respects the practice in civil cases shall apply. Appeal shall lie from the judgment of the superior court as in other civil cases. The attorney general shall be the legal adviser of the department and shall represent it in all proceedings, whenever so requested by any of the commissioners. In all court proceedings under or pursuant to this act the decision of the department shall be *prima facie* correct, and the burden of proof shall be upon the party attacking the same. Appeal.

SEC. 21. *Creation of Department.*

The administration of this act is imposed upon a department, to be known as the Industrial Insurance Department, to consist of three commissioners to be appointed by the governor. One of them shall hold office for the first two years, another for the first four years, and another for the first six years following the passage and approval of this act. Thereafter the term shall be six years. Each commissioner shall hold until his successor shall be appointed and shall have qualified. A decision of any question arising under this act concurred in by two of the commissioners shall be the decision of the department. The governor may at any time remove any commissioner from office in his discretion, but within ten days following any such removal the governor shall file in the office of the secretary of state a statement of his reasons therefor. The commission shall select one of their members as chairman. The main office of the commission shall be at the state capitol, but branch offices may be established at other places in the state. Each member of the commission shall have power to issue subpoenas requiring the attendance of witnesses and the production of books and documents. Creating department.

SEC. 22. *Salary of Commissioners.*

The salary of each of the commissioners shall be thirty-six hundred dollars per annum, and he shall be allowed his actual and necessary traveling and incidental expenses; Salary.

and any assistant to the commissioners shall be paid for each full days service rendered by him, his actual and necessary traveling, expenses and such compensation as the commission may deem proper, not to exceed six dollars per day to an auditor, or five dollars per day to any other assistant.

SEC. 23. *Deputies and Assistants.*

Deputies.

The commissioners may appoint a sufficient number of auditors and assistants to aid them in the administration of this act, at an expense not to exceed \$5,000.00 per month. They may employ one or more physicians in each county for the purpose of official medical examinations, whose compensation shall be limited to five dollars for each examination and report therein. They may procure such record books as they may deem necessary for the record of the financial transactions and statistical data of the department, and the necessary documents, forms and blanks. They may establish and require all employers to install and maintain an uniform form of pay roll.

SEC. 24. *Conduct, Management and Supervision of Department.*

Management and supervision.

The commission shall, in accordance with the provisions of this act:

1. Establish and promulgate rules governing the administration of this act.
2. Ascertain and establish the amounts to be paid into and out of the accident fund.
3. Regulate the proof of accident and extent thereof, the proof of death and the proof of relationship and the extent of dependency.
4. Supervise the medical, surgical and hospital treatment to the intent that same may be in all cases suitable and wholesome.
5. Issue proper receipts for moneys received, and certificates for benefits accrued and accruing.
6. Investigate the cause of all serious injuries and report to the governor from time to time any violations or

laxity in performance of protective statutes or regulations coming under the observation of the department.

7. Compile and preserve statistics showing the number of accidents occurring in the establishment or works of each employer, the liabilities and expenditures of the accident fund on account of, and the premium collected from the same, and hospital charges and expenses.

8. Make annual reports to the governor (one of them not more than sixty nor less than thirty days prior to each regular session of the legislature) of the workings of the department, and showing the financial status and the outstanding obligations of the accident fund, and the statistics aforesaid.

SEC. 25. *Medical Witnesses.*

Upon the appeal of any workman from any decision of the department affecting the extent of his injuries or the progress of the same, the court may appoint not to exceed three physicians to examine the physical condition of the appellant, who shall make to the court their report thereon, and they may be interrogated before the court by or on behalf of the appellant in relation to the same. The fee of each shall be fixed by the court, but shall not exceed ten dollars per day each.

Appoint
physicians.

SEC. 26. *Disbursement of Funds.*

Disbursement out of the funds shall be made only upon warrants drawn by the state auditor upon vouchers therefor transmitted to him by the department and audited by him. The state treasurer shall pay every warrant out of the fund upon which it is drawn. If, at any time, there shall not be sufficient money in the fund on which any such warrant shall have been drawn wherewith to pay the same, the employer on account of whose workman it was that the warrant was drawn shall pay the same, and he shall be credited upon his next following contribution to such fund the amount so paid with interest thereon at the legal rate from the date of such payment to the date such next following contribution became payable, and if the amount of the credit shall exceed the amount of the contribution, he

Employer
may pay,
when.

Keep fund
invested.

shall have a warrant upon the same fund for the excess, and if any such warrant shall not be so paid, it shall remain, nevertheless, payable out of the fund. The state treasurer shall to such extent as shall appear to him to be advisable keep the moneys of the unsegregated portion of the accident fund invested at interest in the class of securities provided by law for the investment of the permanent school fund. The state treasurer shall be liable on his official bond for the safe custody of the moneys and securities of the accident fund, but all the provisions of an act approved February 21, 1907, entitled "An act to provide for state depositories and to regulate the deposits of state moneys therein," shall be applied to said moneys and the handling thereof by the state treasurer.

SEC. 27. *Test of Invalidity of Act.*

Shall not
impair act.

If any employer shall be adjudicated to be outside the lawful scope of this act, the act shall not apply to him or his workman, or if any workman shall be adjudicated to be outside the lawful scope of this act because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this act in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions of section 4 of this act for the creation of the accident fund, or the provisions of this act making the compensation to the workman provided in it exclusive of any other remedy on the part of the workman shall be held invalid the entire act shall be thereby invalidated except the provisions of section 31, and an accounting according to the justice of the case shall be had of moneys received. In other respects an adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any other part thereof.

SEC. 28. *Statute of Limitations Saved.*

If the provisions of this act relative to compensation for injuries to or death of workmen become invalid because of any adjudication, or be repealed, the period intervening

between the occurrence of an injury or death, not previously compensated for under this act by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death: *Provided*, That such action be commenced within one year after such repeal or adjudication; but in any such action any sum paid out of the accident fund to the workman on account of injury, to whom the action is prosecuted, shall be taken into account or disposed of as follows: If the defendant employer shall have paid without delinquency into the accident fund the payment provided by section 4, such sums shall be credited upon the recovery as payment thereon, otherwise the sum shall not be so credited but shall be deducted from the sum collected and be paid into the said fund from which they had been previously disbursed.

Action with-
in one year.

SEC. 29. *Appropriations.*

There is hereby appropriated out of the state treasury the sum of one hundred and fifty thousand dollars, or so much thereof as may be necessary, to be known as the administration fund, out of which the salaries, traveling and office expenses of the department shall be paid, and also all other expenses of the administration of the accident fund; and there is hereby appropriated out of the accident fund for the purpose to which said fund is applicable the sum of \$1,500,000.00, or so much thereof as shall be necessary for the purposes of this act.

Appro-
priations.

SEC. 30. *Safeguard Regulations Preserved.*

Nothing in this act contained shall repeal any existing law providing for the installation or maintenance of any device, means or method for the prevention of accidents in extra hazardous work or for a penalty or punishment for failure to install or maintain any such protective device, means or method, but sections 8, 9, and 10 of the act approved March 6, 1905, entitled: "An act providing for the protection and health of employes in factories, mills or

No previous
acts repealed.

workshops, where machinery is used, and providing for suits to recover damages sustained by the violation thereof, and prescribing a punishment for the violation thereof and repealing an act entitled, 'An act providing for the protection of employes in factories, mills, or workshops where machinery is used, and providing for the punishment of the violation thereof, approved March 6, 1903,' and repealing all other acts or parts of acts in conflict herewith," are hereby repealed, except as to any cause of action which shall have accrued thereunder prior to October 1, 1911.

SEC. 31. *Distribution of Funds in Case of Repeal.*

Distribution. If this act shall be hereafter repealed, all moneys which are in the accident fund at the time of the repeal shall be subject to such disposition as may be provided by the legislature, and in default of such legislative provision distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

SEC. 32. *Saving Clause.*

Saving clause.

This act shall not affect any action pending or cause of action existing on the 30th day of September, 1911.

Passed by the House February 23, 1911.

Passed by the Senate March 7, 1911.

Approved by the Governor March 14, 1911.

California Labor Code Section 4454

4454. In determining average weekly earnings within the limits fixed in Section 4453, there shall be included overtime and the market value of board, lodging, fuel, and other advantages received by the injured employee as part of his remuneration, which can be estimated in money, but such average weekly earnings shall not include any sum which the employer pays to or for the injured employee to cover any special expenses entailed on the employee by the nature of his employment, nor shall there be included either the cost or the market value of any savings, wage continuation, wage replacement, or stock acquisition program or of any employee benefit programs for which the employer pays or contributes to persons other than the employee or his family.

LABOR CODE

TITLE 5. WORKERS' COMPENSATION

SUBTITLE A. TEXAS WORKERS' COMPENSATION ACT

CHAPTER 401. GENERAL PROVISIONS

SUBCHAPTER B. DEFINITIONS

Sec. 401.011. GENERAL DEFINITIONS. In this subtitle:

- (1) "Adjuster" means a person licensed under Chapter 4101, Insurance Code.
- (2) "Administrative violation" means a violation of this subtitle, a rule adopted under this subtitle, or an order or decision of the commissioner that is subject to penalties and sanctions as provided by this subtitle.
- (3) "Agreement" means the resolution by the parties to a dispute under this subtitle of one or more issues regarding an injury, death, coverage, compensability, or compensation. The term does not include a settlement.
- (4) "Alien" means a person who is not a citizen of the United States.
- (5) "Benefit" means a medical benefit, an income benefit, a death benefit, or a burial benefit based on a compensable injury.
- (5-a) "Case management" means a collaborative process of assessment, planning, facilitation, and advocacy for options and services to meet an individual's health needs through communication and application of available resources to promote quality, cost-effective outcomes.
- (6) "Certified self-insurer" means a private employer granted a certificate of authority to self-insure, as authorized by this subtitle, for the payment of compensation.
- (7) "Child" means a son or daughter. The term includes an adopted child or a stepchild who is a dependent of the employee.
- (8) "Commissioner" means the commissioner of workers' compensation.
- (9) "Commute" means to pay in a lump sum.
- (10) "Compensable injury" means an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle.
- (11) "Compensation" means payment of a benefit.
- (12) "Course and scope of employment" means an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business

of the employer. The term includes an activity conducted on the premises of the employer or at other locations. The term does not include:

(A) transportation to and from the place of employment unless:

(i) the transportation is furnished as a part of the contract of employment or is paid for by the employer;

(ii) the means of the transportation are under the control of the employer; or

(iii) the employee is directed in the employee's employment to proceed from one place to another place; or

(B) travel by the employee in the furtherance of the affairs or business of the employer if the travel is also in furtherance of personal or private affairs of the employee unless:

(i) the travel to the place of occurrence of the injury would have been made even had there been no personal or private affairs of the employee to be furthered by the travel; and

(ii) the travel would not have been made had there been no affairs or business of the employer to be furthered by the travel.

(12-a) "Credentialing" has the meaning assigned by Chapter 1305, Insurance Code.

(13) "Death benefit" means a payment made under this subtitle to a legal beneficiary because of the death of an employee.

(13-a) "Department" means the Texas Department of Insurance.

(14) "Dependent" means an individual who receives a regular or recurring economic benefit that contributes substantially to the individual's welfare and livelihood if the individual is eligible for distribution of benefits under Chapter 408.

(15) "Designated doctor" means a doctor appointed by mutual agreement of the parties or by the division to recommend a resolution of a dispute as to the medical condition of an injured employee.

(16) "Disability" means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage.

(16-a) "Division" means the division of workers' compensation of the department.

(17) "Doctor" means a doctor of medicine, osteopathic medicine, optometry, dentistry, podiatry, or chiropractic who is licensed and authorized to practice.

(18) "Employer" means, unless otherwise specified, a person who makes a contract of hire, employs one or more employees, and has workers' compensation insurance coverage. The term includes a governmental entity that self-insures, either individually or collectively.

(18-a) "Evidence-based medicine" means the use of current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts, and treatment and practice guidelines in making decisions about the care of individual patients.

(19) "Health care" includes all reasonable and necessary medical aid, medical examinations, medical treatments, medical diagnoses, medical evaluations, and medical services. The term does not include vocational rehabilitation. The term includes:

(A) medical, surgical, chiropractic, podiatric, optometric, dental, nursing, and physical therapy services provided by or at the direction of a doctor;

(B) physical rehabilitation services performed by a licensed occupational therapist provided by or at the direction of a doctor;

(C) psychological services prescribed by a doctor;

(D) the services of a hospital or other health care facility;

(E) a prescription drug, medicine, or other remedy; and

(F) a medical or surgical supply, appliance, brace, artificial member, or prosthetic or orthotic device, including the fitting of, change or repair to, or training in the use of the appliance, brace, member, or device.

(20) "Health care facility" means a hospital, emergency clinic, outpatient clinic, or other facility providing health care.

(21) "Health care practitioner" means:

(A) an individual who is licensed to provide or render and provides or renders health care; or

(B) a nonlicensed individual who provides or renders health care under the direction or supervision of a doctor.

(22) "Health care provider" means a health care facility or health care practitioner.

(22-a) "Health care reasonably required" means health care that is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with:

(A) evidence-based medicine; or

(B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community.

(23) "Impairment" means any anatomic or functional abnormality or loss existing after maximum medical improvement that results from a compensable injury and is reasonably presumed to be permanent.

(24) "Impairment rating" means the percentage of permanent impairment of the whole body resulting from a compensable injury.

(25) "Income benefit" means a payment made to an employee for a compensable injury. The term does not include a medical benefit, death benefit, or burial benefit.

(25-a) "Independent review organization" has the same meaning as in Section 1305.004(a)(11), Insurance Code.

(26) "Injury" means damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm. The term includes an occupational disease.

(27) "Insurance carrier" means:

- (A) an insurance company;
- (B) a certified self-insurer for workers' compensation insurance;
- (C) a certified self-insurance group under Chapter 407A; or
- (D) a governmental entity that self-insures, either individually or collectively.

(28) "Insurance company" means a person authorized and admitted by the Texas Department of Insurance to do insurance business in this state under a certificate of authority that includes authorization to write workers' compensation insurance.

(29) "Legal beneficiary" means a person entitled to receive a death benefit under this subtitle.

(30) "Maximum medical improvement" means the earlier of:

- (A) the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated;
 - (B) the expiration of 104 weeks from the date on which income benefits begin to accrue;
- or
- (C) the date determined as provided by Section 408.104.

(31) "Medical benefit" means payment for health care reasonably required by the nature of a compensable injury and intended to:

- (A) cure or relieve the effects naturally resulting from the compensable injury, including reasonable expenses incurred by the employee for necessary treatment to cure and relieve the employee from the effects of an occupational disease before and after the employee knew or should have known the nature of the disability and its relationship to the employment;
- (B) promote recovery; or
- (C) enhance the ability of the employee to return to or retain employment.

(31-a) "Network" or "workers' compensation health care network" means an organization that is:

- (A) formed as a health care provider network to provide health care services to injured employees;
- (B) certified in accordance with Chapter 1305, Insurance Code, and rules of the commissioner of insurance; and
- (C) established by, or operates under contract with, an insurance carrier.

(32) "Objective" means independently verifiable or confirmable results that are based on recognized laboratory or diagnostic tests, or signs confirmable by physical examination.

(33) "Objective clinical or laboratory finding" means a medical finding of impairment resulting from a compensable injury, based on competent objective medical evidence, that is independently confirmable by a doctor, including a designated doctor, without reliance on the subjective symptoms perceived by the employee.

(34) "Occupational disease" means a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury. The term includes a disease or infection that naturally results from the work-related disease. The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease.

(34-a) "Orthotic device" means a custom-fitted or custom-fabricated medical device that is applied to a part of the human body to correct a deformity, improve function, or relieve symptoms related to a compensable injury or occupational disease.

(35) "Penalty" means a fine established by this subtitle.

(35-a) "Prosthetic device" means an artificial device designed to replace, wholly or partly, an arm or leg.

(36) "Repetitive trauma injury" means damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment.

(37) "Representative" means a person, including an attorney, authorized by the commissioner to assist or represent an employee, a person claiming a death benefit, or an insurance carrier in a matter arising under this subtitle that relates to the payment of compensation.

(38) "Research center" means the research functions of the Texas Department of Insurance required under Chapter 405.

(38-a) "Retrospective review" means the utilization review process of reviewing the medical necessity and reasonableness of health care that has been provided to an injured employee.

(39) "Sanction" means a penalty or other punitive action or remedy imposed by the commissioner on an insurance carrier, representative, employee, employer, or health care provider for an act or omission in violation of this subtitle or a rule, order, or decision of the commissioner.

(40) "Settlement" means a final resolution of all the issues in a workers' compensation claim that are permitted to be resolved under the terms of this subtitle.

(41) "Subjective" means perceivable only by an employee and not independently verifiable or confirmable by recognized laboratory or diagnostic tests or signs observable by physical examination.

(42) "Treating doctor" means the doctor who is primarily responsible for the employee's health care for an injury.

(42-a) "Utilization review" has the meaning assigned by Chapter 4201, Insurance Code.

(42-b) "Utilization review agent" has the meaning assigned by Chapter 4201, Insurance Code.

(42-c) "Violation" means an administrative violation subject to penalties and sanctions as provided by this subtitle.

(43) "Wages" includes all forms of remuneration payable for a given period to an employee for personal services. The term includes the market value of board, lodging, laundry, fuel, and any other advantage that can be estimated in money that the employee receives from the employer as part of the employee's remuneration.

(44) "Workers' compensation insurance coverage" means:

(A) an approved insurance policy to secure the payment of compensation;

(B) coverage to secure the payment of compensation through self-insurance as provided by this subtitle; or

(C) coverage provided by a governmental entity to secure the payment of compensation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1443, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 275, Sec. 2, eff. Sept. 1, 2003.

Send to workers' compensation carrier:

(Name and fax number of carrier)



CLAIM # _____

CARRIER'S CLAIM # _____

Initial Amended **EMPLOYER'S WAGE STATEMENT (DWC Form-003)**

The Texas Workers' Compensation Act and Workers' Compensation rules require an employer to provide an Employer's Wage Statement to its workers' compensation insurance carrier (carrier) and the claimant or the claimant's representative, if any. The purpose of the form is to provide the employee's wage information to the carrier for calculating the employee's Average Weekly Wage (AWW) to establish benefits due to the employee or a beneficiary.

The AWW is based on the wages the employee earned in the 13 weeks immediately preceding the date of injury (or the wage a similar employee earned if the employee did not work the full 13-week period). "Wages" include all forms of remuneration payable to an employee for personal services, including fringe benefits. To simplify filing, employers may file wages in a monthly, biweekly, or weekly manner as discussed below.

NOTE - An employer who fails without good cause to timely file a complete wage statement as required by the Texas Workers' Compensation Act, Texas Labor Code, Section 408.063(c) and Worker's Compensation Rule 120.4 may be assessed an administrative penalty.

The employer shall timely file a complete wage statement in the form and manner prescribed by the Division.

(1) The wage statement shall be filed ("filed" means received) with the carrier, the claimant, and the claimant's representative (if any) within 30 days of the earliest of:

- (A) the employee's eighth day of disability;
- (B) the date the employer is notified that the employee is entitled to income benefits;
- (C) the date of the employee's death as a result of a compensable injury.

(2) The wage statement shall also be filed with the Division within seven days of receiving a request from the Division (Only When Requested).

(3) A subsequent wage statement shall be filed with the carrier, employee, and the employee's representative (if any) within seven days if any information contained on the previous wage statement changes (such as if the employer discontinues providing a nonpecuniary wage that was initially continued after the date of injury).

All applicable DWC rules can be found at <http://www.tdi.texas.gov/wc/rules/>

EMPLOYEE AND EMPLOYER INFORMATION

Employee's Name (Last, First, M.I.):	Employer's Business Name:
Employee's Mailing Address (Street or P.O. Box):	Employer's Mailing Address (Street or P.O. Box):
City: State: ZIP Code:	City: State: ZIP Code:
Social Security Number: xxx-xx-	Federal Tax I.D. Number:
Date of Hire: Date of Injury:	Name and Phone # of Person Providing Wage Information:
<input type="checkbox"/> As of today's date, the employee is not back at work. OR <input type="checkbox"/> The employee returned to work on _____ and is working: <input type="checkbox"/> without restriction. OR <input type="checkbox"/> with restrictions and is earning wages of \$ _____ per week/month (circle one). NOTE - Rule 120.3 requires the employer file the Supplemental Report of Injury (DWC FORM-6) to report changes in Work Status and Post-Injury Earnings.	I HEREBY CERTIFY THAT this wage statement is complete, accurate, and complies with the Texas Workers' Compensation Act and applicable rules, and the listed wages include all pecuniary and nonpecuniary wages paid for (earned in) the 13 weeks prior to the date of injury (as described on page 2) and I understand that making a misrepresentation about a workers' compensation claim is a crime that can result in fines and/or imprisonment. Signature: _____ Date: _____

EMPLOYMENT STATUS AT TIME OF INJURY (Check All That Apply)

<input type="checkbox"/> Full-time: employee who regularly works at least 30 hours per week and whose schedule is comparable to other employees of the company and/or other employees in the same business or vicinity who are considered full-time. <input type="checkbox"/> Seasonal: employee who as regular course of conduct engages in seasonal or cyclical employment that may or may not be agricultural in nature and that does not continue throughout the year.	<input type="checkbox"/> Part-time: Regular Course of Conduct: employee whose work history for the 12-month period preceding the injury shows the person only worked part-time during that period. <input type="checkbox"/> Part-time: Not Regular Course of Conduct: employee whose work history for the 12-month period preceding the injury shows part-time and full time work during that period. <input type="checkbox"/> Apprentice: employee who is learning a skilled trade or art by practical experience under the direction of a skilled crafts person or artisan.	<input type="checkbox"/> Minor: employee less than 18 years of age and not emancipated by marriage or judicial action who is also an apprentice, trainee or student. <input type="checkbox"/> Student: employee enrolled in a course of study in high school, college or other institute of higher education or technical training. <input type="checkbox"/> Trainee: employee undergoing systematic instruction and practice in some art, trade or profession with a view towards proficiency in it.
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SAME OR SIMILAR EMPLOYEE?

The wage information on this form is for:

The Injured Employee **OR** A Similar Employee (NOTE - If requested by the Division, the employer shall identify the similar employee whose wages were provided.)

If the employee was not employed for 13 continuous weeks before the date of injury, report the wages of an employee who has training, experience, skills & wages comparable to the injured employee AND who performs services/tasks comparable in nature and in number of hours. **If no similar employee exists, report the limited available wages earned by the injured employee prior to the injury.**

NOTE TO INJURED EMPLOYEE - If you were injured on or after 7/1/02, and had employment with more than one employer on the date of injury, you can provide your insurance carrier with wage information from your other employment for the carrier to include in your AWW and this may affect your benefits. Contact your carrier for additional information or call the Division at (800) 252-7031. You can also read rule 122.5 at <http://www.tdi.texas.gov/wc/rules/>



WAGE INFORMATION INSTRUCTIONS

Employee Name:

Social Security #:

Date of Injury:

- The employer shall report all wages **earned in the 13 weeks immediately preceding the date of injury**. If the employee is paid on a monthly or semi-monthly basis, the employer may provide wages for the 3 months preceding the date of injury. Monthly wages may also be converted to weekly wages by dividing the gross monthly amount by 4.34821. If the employee is paid on a biweekly basis, the employer may provide the wages for the 14 weeks preceding the date of injury. When setting the periods to report, the employer may adjust the reporting period backward slightly (up to six days) to line up the reporting timeframes with the employer's natural pay cycle. **However, the employer shall not report wages earned on or after the date of injury.**

- If reporting weekly earnings, use all 13 Period Columns below. If reporting 3 months of earnings, either convert the wages to weekly earnings or use the first 3 Period Columns. If reporting 14 weeks of biweekly earnings, use the first 7 Period Columns. **In all cases, indicate the dates that each period covers.**

PECUNIARY WAGE INFORMATION

Pecuniary Wages include all wages that are paid to the employee in the form of money. These include, but are not limited to: hourly, weekly, biweekly, monthly, etc. wages; salary; tips/gratuities; piecework compensation; monetary allowances; bonuses; and commissions. Earnings are reported in the periods they are earned, NOT when they are paid and some (such as bonuses and commissions) need to be prorated. Pecuniary wages don't include payments made by an employer to reimburse the employee for the use of the employee's equipment or for paying helpers or to reimburse for travel expenses. Consider as earnings amounts from paid holidays and any vacation, personal or sick leave an employee used but not the market value of leave time earned but not used.

PERIOD # (Week #, Month #, or Bi-Week #)	1	2	3	4	5	6	7	8	9	10	11	12	13	
FROM DATE:														
TO DATE:														TOTALS
# HOURS WORKED:														
GROSS WAGES EARNED:														

NONPECUNIARY WAGE INFORMATION

Nonpecuniary Wages include all wages paid to the employee in a form other than money. These include, but are not limited to, the benefits listed below but do not include monetary allowances or stipends paid to allow the employee to purchase the benefits.

Nonpecuniary Wage Type	Employer Provided Prior To Injury?		Specify Value Or Amount Earned in Each Reported Period For Each Benefit Provided Prior To Injury (Use the same periods as used above)													Will Employer Continue To Provide?		Date Benefit Suspended (if suspended)
	YES	NO	1	2	3	4	5	6	7	8	9	10	11	12	13	YES	NO	
Health Insurance																		
Laundry/Cleaning																		
Clothing/Uniforms																		
Lodging/Housing																		
Food/Meals																		
Vehicle/Fuel																		
Other																		

NOTE: With few exceptions, you are entitled on request to be informed about the information that TDI-DWC collects about you. Under §§552.021 and 552.023 of the Government Code, you are entitled to receive and review the information. Under §559.004 of the Government Code you are entitled to have TDI-DWC correct information about you that is incorrect. For more information, call the local TDI-DWC field office at 800-252-7031.



SENATE BILL 5124

State of Washington

63rd Legislature

2013 Regular Session

By Senators Holmquist Newbry, Braun, King, Baumgartner, Rivers, Ericksen, Benton, Becker, Dammeier, Smith, Schoesler, Honeyford, Tom, Parlette, and Hewitt

Read first time 01/18/13. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to simplifying and adding certainty to the
2 calculation of workers' compensation benefits; amending RCW 51.32.050
3 51.32.060, and 51.32.090; adding a new section to chapter 51.08 RCW;
4 repealing RCW 51.08.178; providing an effective date; and declaring an
5 emergency.

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

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

9 (1) If a worker is injured in an employment that both the worker
10 and the particular employer intend to be permanent and lasting into the
11 foreseeable future, the worker's monthly wage shall be determined by
12 dividing by twelve the total wages earned from the particular
13 employment and any other concurrent employment, including cash bonuses
14 and overtime, in the twelve months immediately preceding the date of
15 injury or manifestation of occupational disease. If the worker has
16 worked less than twelve months for the particular employer in whose
17 employment the worker was injured or manifested the occupational
18 disease, the monthly wage shall be based on the total wages earned by

1 the worker in the employment, divided by the total number of months the
2 worker actually worked in the employment.

3 (2) If a worker is injured in an employment that either the worker
4 or the particular employer intends to be temporary and not lasting into
5 the foreseeable future, the worker's monthly wage shall be determined
6 by dividing by twelve the total wages earned from all employment,
7 including cash bonuses and overtime, in the twelve months immediately
8 preceding the date of injury or manifestation of occupational disease.

9 (3) "Wages" means the gross monetary remuneration for services
10 performed with respect to a pay period, paid in cash, by check, by
11 electronic transfer, or by other means directly to the worker or to an
12 account designated by the worker. Wages shall include the actual value
13 of board, housing, and fuel received from the employer as part of the
14 contract for hire. Tips shall be included to the extent that such are
15 reported to the employer for federal income tax purposes. Wages shall
16 not include health and welfare benefits, savings matching programs, or
17 fringe benefits including, but not limited to, retirement and financial
18 benefit plans of whatever nature; life, disability, and wage-
19 replacement insurance of whatever nature; unused accrued leave of
20 whatever nature; memberships of any kind; employee discounts or use or
21 consumption of employer services, material, equipment, and facilities
22 of whatever nature; training and education of whatever nature; and
23 other employee or beneficiary benefit plan for the employee's or
24 beneficiaries' benefit resulting from the employment relationship.

25 **Sec. 2.** RCW 51.32.050 and 2010 c 261 s 3 are each amended to read
26 as follows:

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

30 (2) (a) (i) For claims with date of injury or manifestation of
31 occupational disease before July 1, 2013, where death results from the
32 injury, a surviving spouse of a deceased worker eligible for benefits
33 under this title shall receive monthly for life or until remarriage
34 payments according to the following schedule:

35 ~~((i))~~ (A) If there are no children of the deceased worker, sixty
36 percent of the wages of the deceased worker;

1 (~~(ii)~~) (B) If there is one child of the deceased worker and in
2 the legal custody of such spouse, sixty-two percent of the wages of the
3 deceased worker;

4 (~~(iii)~~) (C) If there are two children of the deceased worker and
5 in the legal custody of such spouse, sixty-four percent of the wages of
6 the deceased worker;

7 (~~(iv)~~) (D) If there are three children of the deceased worker and
8 in the legal custody of such spouse, sixty-six percent of the wages of
9 the deceased worker;

10 (~~(v)~~) (E) If there are four children of the deceased worker and
11 in the legal custody of such spouse, sixty-eight percent of the wages
12 of the deceased worker; or

13 (~~(vi)~~) (F) If there are five or more children of the deceased
14 worker and in the legal custody of such spouse, seventy percent of the
15 wages of the deceased worker.

16 (ii) For claims with date of injury or manifestation of
17 occupational disease on or after July 1, 2013, where death results from
18 the injury, a surviving spouse of a deceased worker eligible for
19 benefits under this title shall receive monthly for life or until
20 remarriage payments of sixty-six and two-thirds percent of the wages of
21 the deceased worker.

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

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

17 (d) In no event shall the monthly payments provided in subsection
18 (2) of this section:

19 (i) Exceed the applicable percentage of the average monthly wage in
20 the state as computed under RCW 51.08.018 as follows:

21	AFTER	PERCENTAGE
22	June 30, 1993	105%
23	June 30, 1994	110%
24	June 30, 1995	115%
25	June 30, 1996	120%
26	<u>June 30, 2013</u>	<u>100%</u>

27 (ii) For dates of injury or disease manifestation after July 1,
28 2008, be less than fifteen percent of the average monthly wage in the
29 state as computed under RCW 51.08.018 plus an additional ten dollars
30 per month for a surviving spouse and an additional ten dollars per
31 month for each child of the worker up to a maximum of five children.
32 However, if the monthly payment computed under this subsection
33 (2)(d)(ii) is greater than one hundred percent of the wages of the
34 deceased worker as determined under (~~RCW 51.08.178~~) section 1 of this

1 act, the monthly payment due to the surviving spouse shall be equal to
2 the greater of the monthly wages of the deceased worker or the minimum
3 benefit set forth in this section on June 30, 2008.

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

12 (f) Upon remarriage of a surviving spouse the monthly payments for
13 the child or children shall continue as provided in this section, but
14 the monthly payments to such surviving spouse shall cease at the end of
15 the month during which remarriage occurs. However, after September 8,
16 1975, an otherwise eligible surviving spouse of a worker who died at
17 any time prior to or after September 8, 1975, shall have an option of:

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

27 (B) If a surviving spouse is the surviving spouse of a member of
28 the law enforcement officers' and firefighters' retirement system under
29 chapter 41.26 RCW or the state patrol retirement system under chapter
30 43.43 RCW, the surviving spouse may receive a lump sum of thirty-six
31 times the monthly compensation rate in effect on the date of remarriage
32 allocable to the spouse for himself or herself pursuant to subsection
33 (2)(a)(i) (A) of this section and RCW 51.32.075(3) or fifty percent of
34 the remaining annuity value of his or her pension provided under this
35 chapter, whichever is the lesser: PROVIDED, That if the injury
36 occurred prior to July 28, 1991, the lump sum benefit shall be as
37 provided in the remarriage benefit schedules then in effect; or

1 (ii) If a surviving spouse does not choose the option specified in
2 subsection (2)(f)(i) of this section to accept the lump sum payment,
3 the remarriage of the surviving spouse of a worker shall not bar him or
4 her from claiming the lump sum payment authorized in subsection
5 (2)(f)(i) of this section during the life of the remarriage, or shall
6 not prevent subsequent monthly payments to him or to her if the
7 remarriage has been terminated by death or has been dissolved or
8 annulled by valid court decree provided he or she has not previously
9 accepted the lump sum payment.

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

16 (h) The effective date of resumption of payments under subsection
17 (2)(f)(ii) of this section to a surviving spouse based upon termination
18 of a remarriage by death, annulment, or dissolution shall be the date
19 of the death or the date the judicial decree of annulment or
20 dissolution becomes final and when application for the payments has
21 been received.

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

27 (3) If there is a child or children and no surviving spouse of the
28 deceased worker or the surviving spouse is not eligible for benefits
29 under this title, a sum equal to thirty-five percent of the wages of
30 the deceased worker shall be paid monthly for one child and a sum
31 equivalent to fifteen percent of such wage shall be paid monthly for
32 each additional child, the total of such sum to be divided among such
33 children, share and share alike: PROVIDED, That benefits under this
34 subsection or subsection (4) of this section shall not exceed the
35 lesser of sixty-five percent of the wages of the deceased worker at the
36 time of his or her death or the applicable percentage of the average
37 monthly wage in the state as defined in RCW 51.08.018, as follows:

	AFTER	PERCENTAGE
1		
2	June 30, 1993	105%
3	June 30, 1994	110%
4	June 30, 1995	115%
5	June 30, 1996	120%
6	<u>June 30, 2013</u>	<u>100%</u>

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

10 (5) If the worker leaves no surviving spouse or child, but leaves
11 a dependent or dependents, a monthly payment shall be made to each
12 dependent equal to fifty percent of the average monthly support
13 actually received by such dependent from the worker during the twelve
14 months next preceding the occurrence of the injury, but the total
15 payment to all dependents in any case shall not exceed the lesser of
16 sixty-five percent of the wages of the deceased worker at the time of
17 his or her death or the applicable percentage of the average monthly
18 wage in the state as defined in RCW 51.08.018 as follows:

	AFTER	PERCENTAGE
19		
20	June 30, 1993	105%
21	June 30, 1994	110%
22	June 30, 1995	115%
23	June 30, 1996	120%
24	<u>June 30, 2013</u>	<u>100%</u>

25 If any dependent is under the age of eighteen years at the time of
26 the occurrence of the injury, the payment to such dependent shall cease
27 when such dependent reaches the age of eighteen years except such
28 payments shall continue until the dependent reaches age twenty-three
29 while permanently enrolled at a full time course in an accredited
30 school. The payment to any dependent shall cease if and when, under
31 the same circumstances, the necessity creating the dependency would
32 have ceased if the injury had not happened.

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

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

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

15 (1) Except as provided in subsection (2) of this section, when the
16 supervisor of industrial insurance shall determine that permanent total
17 disability results from the injury, the worker shall receive monthly
18 during the period of such disability:

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

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

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

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

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

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

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

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

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

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

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

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

7 (2) For any claim with date of injury or manifestation of
8 occupational disease on or after July 1, 2013, when the supervisor of
9 industrial insurance determines that permanent total disability results
10 from the injury, the worker shall receive monthly during the period of
11 such disability sixty-six and two-thirds percent of his or her wages as
12 determined under section 1 of this act, but not less than two hundred
13 seventy-six dollars per month.

14 (3) For any period of time where both husband and wife are entitled
15 to compensation as temporarily or totally disabled workers, only that
16 spouse having the higher wages of the two shall be entitled to claim
17 their child or children for compensation purposes under subsection (1)
18 of this section.

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

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

30 (~~(+5)~~) (6) In no event shall the monthly payments provided in this
31 section:

32 (a) Exceed the applicable percentage of the average monthly wage in
33 the state as computed under the provisions of RCW 51.08.018 as follows:

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

1	June 30, 1995	115%
2	June 30, 1996	120%
3	<u>June 30, 2013</u>	<u>100%</u>

4 (b) For dates of injury or disease manifestation after July 1,
5 2008, but before June 30, 2013, be less than fifteen percent of the
6 average monthly wage in the state as computed under RCW 51.08.018 plus
7 an additional ten dollars per month if a worker is married and an
8 additional ten dollars per month for each child of the worker up to a
9 maximum of five children. However, if the monthly payment computed
10 under this subsection (~~((5))~~) (6)(b) is greater than one hundred
11 percent of the wages of the worker as determined under (~~RCW~~
12 ~~51.08.178~~) section 1 of this act, the monthly payment due to the
13 worker shall be equal to the greater of the monthly wages of the worker
14 or the minimum benefit set forth in this section on June 30, 2008.

15 The limitations under this subsection shall not apply to the
16 payments provided for in subsection (~~((3))~~) (4) of this section.

17 (~~((6))~~) (7) In the case of new or reopened claims, if the
18 supervisor of industrial insurance determines that, at the time of
19 filing or reopening, the worker is voluntarily retired and is no longer
20 attached to the workforce, benefits shall not be paid under this
21 section.

22 (~~((7))~~) (8) The benefits provided by this section are subject to
23 modification under RCW 51.32.067.

24 **Sec. 4.** RCW 51.32.090 and 2011 1st sp.s. c 37 s 101 are each
25 amended to read as follows:

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

29 (2) Any compensation payable under this section for children not in
30 the custody of the injured worker as of the date of injury shall be
31 payable only to such person as actually is providing the support for
32 such child or children pursuant to the order of a court of record
33 providing for support of such child or children. This subsection does
34 not apply to claims filed on or after July 1, 2013.

35 (3) (a) As soon as recovery is so complete that the present earning
36 power of the worker, at any kind of work, is restored to that existing

1 at the time of the occurrence of the injury, the payments shall cease.
2 If and so long as the present earning power is only partially restored
3 and the worker is working, the payments shall:

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

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

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

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

22 (d) The injured worker remains eligible for the benefits provided
23 in this subsection only until the injured worker's condition is
24 medically fixed and stable.

25 (4) (a) The legislature finds that long-term disability and the cost
26 of injuries is significantly reduced when injured workers remain at
27 work following their injury. To encourage employers at the time of
28 injury to provide light duty or transitional work for their workers,
29 wage subsidies and other incentives are made available to employers
30 insured with the department.

31 (b) Whenever the employer of injury requests that a worker who is
32 entitled to temporary total disability under this chapter be certified
33 by a physician or licensed advanced registered nurse practitioner as
34 able to perform available work other than his or her usual work, the
35 employer shall furnish to the physician or licensed advanced registered
36 nurse practitioner, with a copy to the worker, a statement describing
37 the work available with the employer of injury in terms that will
38 enable the physician or licensed advanced registered nurse practitioner

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

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

36 (d) If an employer insured with the department offers a worker work
37 pursuant to this subsection (4) and the worker must be provided with
38 training or instruction to be qualified to perform the offered work,

1 the employer shall be eligible for a reimbursement from the department
2 for any tuition, books, fees, and materials required for that training
3 or instruction, up to a maximum of one thousand dollars. Reimbursing
4 an employer for the costs of such training or instruction does not
5 constitute a determination by the department that the worker is
6 eligible for vocational services authorized by RCW 51.32.095 and
7 51.32.099.

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

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

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

35 (h) An employer shall not receive any wage subsidies or
36 reimbursement of any expenses pursuant to this subsection (4) unless
37 the employer has completed and submitted the reimbursement request on
38 forms developed by the department, along with all related information

1 required by department rules. No wage subsidy or reimbursement shall
2 be paid to an employer who fails to submit a form for such payment
3 within one year of the date the work was performed. In no event shall
4 an employer receive wage subsidy payments or reimbursements of any
5 expenses pursuant to this subsection (4) unless the worker's physician
6 or licensed advanced registered nurse practitioner has restricted him
7 or her from performing his or her usual work and the worker's physician
8 or licensed advanced registered nurse practitioner has released him or
9 her to perform the work offered.

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

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

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

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

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

36 (6) The department shall create a Washington stay-at-work account
37 which shall be funded by assessments of employers insured through the
38 state fund for the costs of the payments authorized by subsection (4)

1 of this section and for the cost of creating a reserve for anticipated
2 liabilities. Employers may collect up to one-half the fund assessment
3 from workers.

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

11 (8) Should a worker suffer a temporary total disability and should
12 his or her employer at the time of the injury continue to pay him or
13 her the wages which he or she was earning at the time of such injury,
14 such injured worker shall not receive any payment provided in
15 subsection (1) or (2) of this section during the period his or her
16 employer shall so pay such wages: PROVIDED, That holiday pay, vacation
17 pay, sick leave, or other similar benefits shall not be deemed to be
18 payments by the employer for the purposes of this subsection.

19 (9) In no event shall the monthly payments provided in this
20 section:

21 (a) Exceed the applicable percentage of the average monthly wage in
22 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%
<u>June 30, 2013</u>	<u>100%</u>

23
24
25
26
27
28
29 (b) For dates of injury or disease manifestation after July 1,
30 2008, be less than fifteen percent of the average monthly wage in the
31 state as computed under RCW 51.08.018 plus an additional ten dollars
32 per month if the worker is married and an additional ten dollars per
33 month for each child of the worker up to a maximum of five children.
34 However, if the monthly payment computed under this subsection (9) (b)

1 is greater than one hundred percent of the wages of the worker as
2 determined under (~~RCW 51.08.178~~) section 1 of this act, the monthly
3 payment due to the worker shall be equal to the greater of the monthly
4 wages of the worker or the minimum benefit set forth in this section on
5 June 30, 2008.

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

9 (11) The department shall adopt rules as necessary to implement
10 this section.

11 NEW SECTION. **Sec. 5.** RCW 51.08.178 ("Wages"--Monthly wages as
12 basis of compensation--Computation thereof) and 2007 c 297 s 1, 1988 c
13 161 s 12, & 1980 c 14 s 5 are each repealed.

14 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
15 preservation of the public peace, health, or safety, or support of the
16 state government and its existing public institutions, and takes effect
17 July 1, 2013.

--- END ---

RCW 51.08.178: "Wages"— Monthly wages as basis of compensation— Computation thereof.

(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. As consideration of like nature to board, housing, and fuel, wages shall also include the employer's payment or contributions, or appropriate portions thereof, for health care benefits unless the employer continues ongoing and current payment or contributions for these benefits at the same level as provided at the time of injury. 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.

[2007 c 297 § 1; 1988 c 161 § 12; 1980 c 14 § 5. Prior: 1977 ex.s. c 350 § 14; 1977 ex.s. c 323 § 6; 1971 ex.s. c 289 § 14.]

RCW 51.12.010: Employments included — Declaration of policy.

There is a hazard in all employment and it is the purpose of this title to embrace all employments which are within the legislative jurisdiction of the state.

This title shall be liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment.

[1972 ex.s. c 43 § 6; 1971 ex.s. c 289 § 2; 1961 c 23 § 51.12.010. Prior: 1959 c 55 § 1; 1955 c 74 § 2; prior: (i) 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part. (ii) 1923 c 128 § 1, part; RRS § 7674a, part.]

RCW 51.52.110: Court appeal — Taking the appeal.

Within thirty days after a decision of the board to deny the petition or petitions for review upon such appeal has been communicated to such worker, beneficiary, employer or other person, or within thirty days after the final decision and order of the board upon such appeal has been communicated to such worker, beneficiary, employer or other person, or within thirty days after the appeal is denied as herein provided, such worker, beneficiary, employer or other person aggrieved by the decision and order of the board may appeal to the superior court. If such worker, beneficiary, employer, or other person fails to file with the superior court its appeal as provided in this section within said thirty days, the decision of the board to deny the petition or petitions for review or the final decision and order of the board shall become final.

In cases involving injured workers, an appeal to the superior court shall be to the superior court of the county of residence of the worker or beneficiary, as shown by the department's records, or to the superior court of the county wherein the injury occurred or where neither the county of residence nor the county wherein the injury occurred are in the state of Washington then the appeal may be directed to the superior court for Thurston county. In all other cases the appeal shall be to the superior court of Thurston county. Such appeal shall be perfected by filing with the clerk of the court a notice of appeal and by serving a copy thereof by mail, or personally, on the director and on the board. If the case is one involving a self-insurer, a copy of the notice of appeal shall also be served by mail, or personally, on such self-insurer. The department shall, in all cases not involving a self-insurer, within twenty days after the receipt of such notice of appeal, serve and file its notice of appearance and such appeal shall thereupon be deemed at issue. If the case is one involving a self-insurer, such self-insurer shall, within twenty days after receipt of such notice of appeal, serve and file its notice of appearance and such appeal shall thereupon be deemed to be at issue. In such cases the department may appear and take part in any proceedings. The board shall serve upon the appealing party, the director, the self-insurer if the case involves a self-insurer, and any other party appearing at the board's proceeding, and file with the clerk of the court before trial, a certified copy of the board's official record which shall include the notice of appeal and other pleadings, testimony and exhibits, and the board's decision and order, which shall become the record in such case. No bond shall be required on appeals to the superior court or on review by the supreme court or the court of appeals, except that an appeal by the employer from a decision and order of the board under *RCW 51.48.070, shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay: PROVIDED, HOWEVER, That whenever the board has made any decision and order reversing an order of the supervisor of industrial insurance on questions of law or mandatory administrative actions of the director, the department shall have the right of appeal to the superior court.

[1988 c 202 § 49; 1982 c 109 § 6; 1977 ex.s. c 350 § 80; 1973 c 40 § 1. Prior: 1972 ex.s. c 50 § 1; 1972 ex.s. c 43 § 36; 1971 ex.s. c 289 § 24; 1971 c 81 § 122; 1961 c 23 § 51.52.110; prior: 1957 c 70 § 61; 1951 c 225 § 14; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

RCW 51.52.115: Court appeal — Procedure at trial — Burden of proof.

Upon appeals to the superior court only such issues of law or fact may be raised as were properly included in the notice of appeal to the board, or in the complete record of the proceedings before the board. The hearing in the superior court shall be de novo, but the court shall not receive evidence or testimony other than, or in addition to, that offered before the board or included in the record filed by the board in the superior court as provided in RCW 51.52.110: PROVIDED, That in cases of alleged irregularities in procedure before the board, not shown in said record, testimony thereon may be taken in the superior court. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. In all court proceedings under or pursuant to this title the findings and decision of the board shall be prima facie correct and the burden of proof shall be upon the party attacking the same. If the court shall determine that the board has acted within its power and has correctly construed the law and found the facts, the decision of the board shall be confirmed; otherwise, it shall be reversed or modified. In case of a modification or reversal the superior court shall refer the same to the department with an order directing it to proceed in accordance with the findings of the court: PROVIDED, That any award shall be in accordance with the schedule of compensation set forth in this title. In appeals to the superior court hereunder, either party shall be entitled to a trial by jury upon demand, and the jury's verdict shall have the same force and effect as in actions at law. Where the court submits a case to the jury, the court shall by instruction advise the jury of the exact findings of the board on each material issue before the court.

[1961 c 23 § 51.52.115. Prior: 1957 c 70 § 62; 1951 c 225 § 15; prior: (i) 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part. (ii) 1949 c 219 § 6; 1939 c 184 § 1; Rem. Supp. 1949 § 7697-2.

RCW 51.52.130: Attorney and witness fees in court appeal.

(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) In an appeal to the superior or appellate court involving the presumption established under RCW 51.32.185, the attorney's fee shall be payable as set forth under RCW 51.32.185.

[2007 c 490 § 4; 1993 c 122 § 1; 1982 c 63 § 23; 1977 ex.s. c 350 § 82; 1961 c 23 § 51.52.130. Prior: 1957 c 70 § 63; 1951 c 225 § 17; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

RCW 51.52.140: Rules of practice — Duties of attorney general — Supreme court appeal.

Except as otherwise provided in this chapter, the practice in civil cases shall apply to appeals prescribed in this chapter. Appeal shall lie from the judgment of the superior court as in other civil cases. The attorney general shall be the legal advisor of the department and the board.

[1961 c 23 § 51.52.140. Prior: 1957 c 70 § 64; 1951 c 225 § 19; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

CERTIFICATE OF MAILING

Yuchasz v. Dep't of Labor and Indus.
Court of Appeals Division I No. 70724-8-I

ORIGINAL APPELLANT'S BRIEF AND ONE COPY TO:

Richard D. Johnson
Court Administrator/Clerk
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COPY OF APPELLANT'S BRIEF TO:

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Mr. Anthony Yuchasz
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Kirkland, WA 98034

I certify that a copy of the document(s) attached hereto was mailed,
to the parties referenced above this 11th day of October, 2013.

BY: _____

A handwritten signature in black ink, appearing to be 'R. Johnson', is written over a horizontal line.