

FILED
Court of Appeals
Division II
State of Washington
8/17/2018 1:19 PM

No. 52177-6-II

IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

WASHINGTON STATE DEPARTMENT
OF LABOR AND INDUSTRIES,

Appellant,

v.

ELLEN WRIGHT,

Respondents.

**BRIEF OF RESPONDENT,
RETROSPECTIVE RATING GROUP**

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Retrospective Rating Group

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I. INTRODUCTION

The Stay-at-Work program is a statutory scheme designed to incentivize employers to return injured workers back to work in exchange for wage subsidies paid by the Department of Labor & Industries (the “Department”). This matter involves a dispute between the Department and injured worker Ellen Wright’s employer, Holly Ridge Center, Inc. (“Holly Ridge”)¹ about payment of such wage subsidies for work performed by Ms. Wright in a light-duty capacity under the auspices of her workers’ compensation claim.

The employer applied for wage reimbursement benefits for all days Ms. Wright worked in a light-duty capacity as outlined by the statute, but the Department wrongfully denied some benefits based upon its rejection of an attending providers retroactive approval of her specific light-duty job. The Department misconstrues the relevant statute at issue here in direct conflict with express legislative intent.

II. STATEMENT OF THE CASE

Ms. Wright sustained an industrial injury in the course of her employment with Holly Ridge on October 15, 2014. CP at 91.

Ms. Wright sought medical attention and was placed on physical work restrictions by her treating provider on October 16, 2017, as outlined in an

¹ The employer also belonged to a retrospective rating group, another interested party to this matter and the Respondent herein.

Activity Prescription Form² (“APF”). *Id.* Ms. Wright returned to work in a light-duty position consistent with those restrictions on October 20, 2016. *Id.*

A formal written job description of the light-duty position Ms. Wright accepted was provided to the treating provider on November 3, 2014, who approved the position. *Id.* at 91-92. It was not until August 2015 that the treating provider gave a formal statement retroactively approving the light-duty work Ms. Wright performed from her start date, October 20, 2014, through October 31, 2014. *Id.* at 92.

Thereafter, the employer applied for wage reimbursement benefits for the days Ms. Wright worked in a light-duty capacity, but was denied reimbursement for all dates prior to the treating provider’s review and approval of the formal written job description on November 3, 2014. *Id.*

Holly Ridge appealed to the Board of Industrial Insurance Appeals (the “Board”), who ultimately directed payment of wage reimbursement benefits to the employer. *Id.* at 10-14. The Department appealed to the Superior Court, who affirmed the Board’s decision. *Id.* at 198-200. This appeal followed by the Department. *Id.* at 201.

² An APF is a generic form from the Department wherein providers fill out details of an injured workers physical restrictions for return-to-work purposes. *See* CP at 50-51.

The issue presented is whether RCW 51.32.090 allows for retroactive physician approval of the light-duty position accepted and worked by Ms. Wright for purposes of wage reimbursement benefits to Holly Ridge.

III. STANDARD OF REVIEW

In any court proceeding, the findings and decision of the Board are prima facie correct until found incorrect by the superior court by a preponderance of the evidence. RCW 51.52.115; *see also Lloyd's of Yakima Floor Center v. Dep't of Labor and Indus.*, 33 Wn. App. 745 (1982); *Gorre v. City of Tacoma*, 184 Wn.2d 30 (2015); *Spivey v. City of Bellevue*, 187 Wn.2d 716 (2017). The Court of Appeals reviews matters arising under the Industrial Insurance Act as any other civil case. RCS. Thus, review is made in the light most favorable to the party who prevailed in superior court and is limited to an examination of the record for sufficient evidence to support the lower court's findings of fact and whether the conclusions of law flow therefrom. *Rogers v. Dep't of Labor & Indus.*, 151 Wn. App. 174, 180 (2009).

Matters of statutory interpretation are reviewed de novo. *O.S.T. ex rel G.T. v. BlueShield*, 181 Wn.2d 691, 696 (2014); *Cascade Floral Products, Inc. v. Dep't of Labor & Indus.*, 142 Wn. App. 613, 618 (2008). The Court may give weight or deference to an agency's interpretation of a

statute, but that deference is limited. *Hill v. Dep't of Labor & Indus.*, 161 Wn. App. 286, 293-94 (2011). The Department's interpretation of a statute is not binding on the Court, despite any deference afforded. *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 812 (2001). Deference is inappropriate where the Department's interpretation conflicts with a statutory mandate, such as liberally construing [the Industrial Insurance Act] for the purpose of reducing suffering and economic loss. *Id.* The Court may substitute its own judgment for that of the agency on issues of law. *Jones v. City of Olympia*, 171 Wn. App. 614, 621 (2012).

IV. ARGUMENT

The goal when interpreting statutes is to effectuate the legislature's intent. *Birgen v. Dep't of Labor & Indus.*, 186 Wn. App. 851, 857, *review denied*, 184 Wn.2d 1012 (2015). As a general rule, terms in a statute are afforded their plain meanings unless there is clear legislative intent to the contrary. *Dennis v. Dep't of Labor & Indus.*, 109 Wn.2d 467, 479-80 (1987). "When statutory language is susceptible to more than one reasonable interpretation, it is considered ambiguous." *Cockle.*, 142 Wn.2d at 808.

Here, the Department ignores express legislative intent written into the statute and attempts to force the argument that the statute is unambiguous despite no less than twelve subparts to the statutory

subsection at issue. See RCW 51.32.090(4)(a)-(l). Each of these twelve provisions addresses different objectives, i.e. entitlement to time-loss compensation for workers and entitlement to wage reimbursement for employers. A review of the relevant provisions will guide in understanding the approach to statutory interpretation appropriate here.

A. The Stay-at-Work program is designed to incentivize employer's to offer modified duty employment to injured workers.

RCW 51.32.090 is a comprehensive statute that provides rights and benefits to injured workers and employers alike in order to achieve better claim outcomes, designated the Stay-at-Work program. Express legislative intent that predicated implementation of this program is found in RCW 51.32.090(4)(a), which provides:

The legislature finds that long-term disability and the cost of injuries is significantly reduced when injured workers remain at work following their injury. To encourage employers at the time of injury to provide light duty or transitional work for their workers, wage subsidies and other incentives are made available to employers insured with the Department.

RCW 51.32.090(4)(a) (emphasis added). In so stating, the Legislature contemplated uninterrupted employment. To achieve this goal, the Legislature incentivized employers to offer an injured worker light-duty or

transitional employment by in turn, offering wage subsidies and other benefits to state-fund employers. *Id.*

The financial incentives as set forth in the Stay-at-Work program are, in pertinent part, as follows:

To further encourage employers to maintain the employment of their injured workers, an employer insured with the department and that offers work to a worker pursuant to this subsection (4) shall be eligible for reimbursement of the injured worker's wages for light duty or transitional work equal to fifty percent of the basic, gross wages paid for that work. . . .

RCW 51.32.090(4)(c). Thus, the importance of keeping workers on the job without interruption is underscored by the fact that the Legislature has funded a program to incentivize employers to make light-duty work available. It is patently inconsistent with the goals and purpose of this program to create additional requirements not outlined in this section of the statute.

Other subsections of the statute provide guidance on a variety of related topics, such as how wage subsidies impact an employer's experience rating, payment of usual wages in lieu of time-loss compensation, and benefits caps relative to the average monthly wages, etc. *See e.g.* RCW 51.32.090(5)-(9). This is a complex statute that, as mentioned above, address a wide variety of interests, issues, and details

associated with an injured worker's inability to work and conversely return to work.³

The Department's argument asks this Court to view the statute through a lens that is too narrow by claiming it is unambiguous on its face. There are two arguments in response. First, that the subsection allowing payment of wage reimbursement benefits, RCW 51.32.090(c), is unambiguous in light of clear legislative intent supporting payment of said benefits to Holly Ridge. In the alternative, if subsection(c) requires resort to reviewing several other provisions of the statute, then it is susceptible to two different meanings and therefore ambiguous and further inquiry into legislative history should be made.

B. The plain meaning of RCW 51.32.090(c) does not require a particular timing requirement for approval of light-duty jobs and legislative intent supports payment of wage subsidies to Holly Ridge.

The Department cites to several provisions of subsection (4) of the statute to support its argument that the statute is unambiguous. However, these fail because the argument is premised on an underlying assumption that the subsection at issue here, RCW 51.32.090(4)(h), includes an unwritten requirement found in subsection 4(b). Subsection 4(h) allows for payment of wage subsidies where the worker's provider has release the worker to perform the work offered, which was met here.

³ See also Dep't Brief at Appendix A.

Indeed, the relevant portion of the statute at issue in this case, subsection (c), states that this subsidy is available when the employer offers work pursuant to subsection (4), not subsection (4)(b). Had the Legislature intended that the steps set forth in subsection (4)(b) are to be conditions precedent to the reimbursement, it would have so stated.

The light-duty job offer provision for purposes of entitlement to time-loss compensation pre-exist the enactment of the 2011 Stay-at-Work program. *See* Appendix A; CP 129-35, 162, 169-72. What the Department fails to address in its brief is the clear legislative intent behind the 2011 amendment and continues to assert arguments that Division I of this Court has expressly rejected – particularly that the considerations and standards for payment of time-loss compensation benefits to workers are not aligned with the considerations and standards for payment of wage reimbursement benefits to employers. Legislative intent is pivotal because this Court is being called upon to resolve an issue of employer’s entitlement to wage reimbursement benefits, not a worker’s entitlement to time-loss compensation.

The plain reading of RCW 51.32.090(4)(a) reveals the Legislature’s intent with regard to the Stay-at-Work reimbursement program. The language of paragraph (a) clearly expresses the Legislature’s wish to help injured workers to *remain* at work. There is no mention of

exclusion of any days worked, nor of the injured worker's overall duration of disability, or that a particular form be filled out in a particular sequence before a worker may begin working in a modified duty capacity. The statute also encourages employers to make an offer of "light duty or transitional work" at the time of injury. The elements are quite simple: there must be an injury, for which the treating provider restricts the injured worker from his job of injury, and releases the injured worker to modified duty. The Department's recitation of subsection 4(b) of the statute conflates a worker's entitlement to time-loss compensation with an employer's right to wage reimbursement benefits.

The Legislature intended that reimbursement be available to employers offering light-duty work. There is no additional requirement as written in the statute and to read otherwise (as the Department asserts) is inconsistent with the intent and purpose of the Legislature.

The Stay-at-Work program operates largely outside the Department's supervision. Thus, an arbitrary requirement by the Department that establishes requirements as to when the employer is eligible for reimbursement is in direct conflict with the legislative intent of the entire program. The Court of Appeals ruled on this particular issue in

Dep't of Labor & Indus. v. Cascadian Building Maintenance, LTD, 185 Wn. App 643 (2015).⁴

In *Cascadian* the employer challenged the Department's withholding of wage reimbursement for the first three days following an industrial injury. *Id.* at 648. The Department argued that the employer may only receive reimbursement for the days the worker would be entitled to time-loss compensation benefits, which it argued did not include the date of injury or first three days following the injury if the disability lasts less than fourteen days under RCW 51.32.090(7). *Id.* The Court explicitly disagreed with the Department's reading of the statute as being contrary to legislative intent. *Id.* at 649. The Court held that "the statute's language indicates the Legislature's intent to encourage *uninterrupted employment*. . . [t]he legislature's plain language thus incentivizes an employer's continuous employment of an injured employee, not a return to light duty after three days." *Id.* at 651 (emphasis added).

The Department's attempt to distinguish *Cascadian* is unpersuasive because it misses the key analysis relative to the Legislature's intent for enactment of the Stay-at-Work program. The Department argued in its brief *Cascadian* doesn't apply because the Court

⁴ The Board case, *In re Norma Tellez* was designated a Significant Decision. BIIA Dec, 12 14405 (2013). Furthermore, the Court of Appeals' decision is the only published opinion that has interpreted the Stay-at-Work provision of the Industrial Insurance Act

was not called upon to decide the exact issue here concerning approval of light-duty work. Rather, it was called upon to determine whether wage reimbursement was owed for the three days following an injury.

While it is true *Cascadian* didn't involve the precise issue here, the holding concerning the purpose and intent of the statute as a whole where wage subsidies to employers are concerned and is therefore of precedential value in this matter. The *Cascadian* Court made clear that the purpose and intent of the statute is to maintain an injured worker's employment, not delay it by way of arbitrary requirements and administrative barriers.

C. Should this Court look beyond subsection(c) to understand when an employer is entitled to payment of wage subsidies, then the statute is ambiguous and further inquiry into legislative materials is necessary.

Given the complexity of the statute and many competing interests the twelve subparts to RCW 51.32.090(4) contain, it is susceptible to differing interpretations – as is evidenced by the case at hand. Legislative history states in part: “A[n act r]elating to stabilizing workers’ compensation premium rates and claim costs through the limited means of creating the stay-at-work program.” Laws of 2011, 1st Sess., ch. 37, § 101, Appendix A to Respondent’s Brief.

Legislative history confirms that the workers’ compensation system should be designed to achieve the best outcomes for injured

workers and as such, the State has an obligation to ensure that the state-fund remains financially solvent. CP 129-30. The Legislature made findings that financial solvency and reducing the cost of long-term disability was key to “ensuring productive worker outcomes.” *Id.* at 130

Legislative intent, findings, and history reveal that the Stay-at-Work program is designed to promote the best outcome for injured workers, which include a fiscally robust State-fund. Better outcomes are also found where the worker is back to work faster and not collecting time-loss if it can be avoided. A more general statutory mandate contained in the Industrial Insurance Act (the “Act”) also speaks to economic loss, which is that the Act “shall be liberally construed or the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring the course of employment.” RCW 51.12.010.

When taken together, the *Cascadian* decision, the legislative history references to the cost of long-term disability, necessity for a financially healthy system, and the express legislative intent written into the statute itself, it is clear that reimbursement to employers who provide light-duty work consistent with physical restrictions as prescribed by the treating provider is consistent with the purpose of the Stay-at-Work program.

D. The attending provider controls whether the work is safe to perform therefore retroactive approval of a formal job description does not compromise worker safety.

The Department points out that the “attending provider is in the driver’s seat” when it comes to light-duty return to work offers. Dep’t Brief at 8. Then it goes on to undermine the attending providers opinions in this case by disregarding all evidence submitted supporting the provider’s approval of the light-duty work offered and performed.

Here, Ms. Wright began working in accordance with the physical restrictions set forth by her treating provider in an APF. The employer accommodated the worker’s physical limitations so as to ensure she could return to work as soon as she was released to work in a modified duty capacity. The formal job description was sent thereafter and retroactively approved. The facts make clear that Ms. Wright maintained her employment with the least amount of interruption by working in an approved modified duty capacity which satisfies the legislative intent of the Stay-at-Work program.

The Stay-at-Work program is a wage subsidy program that is triggered only when all elements of the statute are met. The treating provider remains the gatekeeper here in that he or she will release the injured worker to modified duty and outline the physical restrictions in an APF, as well as review and approve a more detailed job description.

Therefore, the work performed is inherently safe for the worker to perform as determined by the treating provider. Should the provider repeal or modify approval of the job, then the modified duty position would no longer be subject to wage reimbursement.

The Department's attempt to tie-in a safety argument does not stand to reason because the treating provider would not release the worker to unsafe work, therefore worker safety is not at issue. Furthermore, the existence and use of the APF is called into question following the Department's logic. By its own design it has these forms available for providers to outline physical restrictions to guide workers and employers alike in what activities are safe for the worker to do. If this practice puts worker safety at risk, it is highly unlikely the Department would have or rely on these types of forms in the administration of workers' compensation claims. To wit, approval of formal written job descriptions are not necessary to return to work following an injury. Certain statutory requirements are necessary when concerned with payment of *benefits*.

The Department's argument is turned on its head – on the one hand it is saying an attending provider is in the driver's seat, but on the other it argues the attending can only make determinations when provided a formal written job description for specific work. The latter is a requirement made up by the Department and has no relevancy when

discussing what is safe for a worker – a provider can determine whether a worker should lift fifty pounds or operate vibratory tools without such formality. In this case, Ms. Wright’s physician was aware she was working light-duty and both doctor and patient had ample opportunity to discuss if that position was unsafe or exceeding her physical capacities. There is no evidence to suggest any such concerns were raised.

E. The express legislative intent of the Stay-at-Work program concerns worker outcomes and does not contain express intent regarding worker safety.

The Department substitutes its own interpretation of legislative intent rather than acknowledge the express legislative intent contained in the statute. The Department accuses Holly Ridge of not following “worker-safety procedures” and ignorance of worker-protection mandates” with zero authority to support its position. Dep’t Brief at 9. The statute contains all information necessary to understand what the requirements are for employers to receive wage subsidies – nowhere are safety precautions, procedures, or mandates mentioned.

When it comes to wage reimbursement benefits, the timing will always be retroactive. Employers are always going to be applying for benefits after the work is performed. What matters for purposes of entitlement to these benefits is that the work performed was within the worker’s physical restrictions and the provider approved the work. When

the position is approved is of no consequence because the work offered is not made until the treating provider has 1) released the worker to work and 2) outlined physical restrictions.

Here, the work offered was consistent with those physical restriction and later confirmed by physician approval of a formal job description. This analysis may not be the same when reviewing the validity of a job offer that is objectionable to an injured worker and the potential consequence is suspension of time-loss compensation. These are wholly different considerations and thus wholly separate subparts of RCW 51.32.090(4).

In addition, the Stay-at-Work program makes it possible for many employers to keep injured workers at work when they otherwise couldn't due to the financial impact of paying a worker who cannot perform at full-duty capacity. To agree with the Department's position would have a chilling effect on the secondary benefit the statute provides by making it financially feasible to keep injured workers on staff despite lost productivity and other ramifications from losing the valuable services of an employee.

The Department's position that the employer subverted worker-safety protections is misplaced. The legislative intent of the Stay-at-Work program is to incentivize employers to maintain an injured worker's

employment as approved by his treating provider. The Act, as well as the Washington Industrial Safety & Health Act are comprehensive statute that all provide for worker safety. This particular provision of the Act is concerned with getting workers back to work as being in the best interest of the worker. By advocating to the contrary, the Department is substituting its own interpretation of legislative intent by adding arbitrary requirements and justifications found nowhere in the statutory language.

The employer here had already incurred the expense of the wages and is entitled to reimbursement under the statute. The Department's denial of these benefits is arbitrary, unsupported by RCW 51.32.090 and runs afoul of legislative intent of the Stay-at-Work program. As is stated in RCW 51.32.090 and reiterated by the *Cascadian* Court, the point of the Stay-at-Work program is to keep injured workers working, not to eventually get them back to work at a later date.

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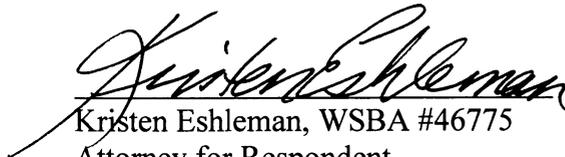
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V. CONCLUSION

For the foregoing reasons, Respondent respectfully requests the trial court order below be affirmed because Holly Ridge was entitled to wage reimbursement benefits in accordance with RCW 51.32.090(4).

Dated this 17th day of August, 2018.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August 2018, a true and correct copy of the BRIEF OF RESPONDENT RETROSPECTIVE RATING GROUP was e-filed and served in the manner prescribed below:

E-Filing via the Washington State Appellate Courts Portal:

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APPENDIX A

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 2123

Chapter 37, Laws of 2011

62nd Legislature
2011 1st Special Session

WORKERS' COMPENSATION SYSTEM

EFFECTIVE DATE: 06/15/11

Passed by the House May 23, 2011
Yeas 69 Nays 26

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate May 23, 2011
Yeas 35 Nays 12

BRAD OWEN

President of the Senate

Approved June 15, 2011, 3:03 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is ENGROSSED HOUSE BILL 2123 as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

June 15, 2011

Secretary of State
State of Washington

ENGROSSED HOUSE BILL 2123

Passed Legislature - 2011 1st Special Session

State of Washington 62nd Legislature 2011 1st Special Session

By Representatives Green and Condotta; by request of Governor Gregoire

1 AN ACT Relating to stabilizing workers' compensation premium rates
2 and claim costs through the limited means of creating the stay-at-work
3 program, suspending cost-of-living adjustments for fiscal year 2012
4 with no catch-up and delaying the initial adjustment, allowing claim
5 resolution structured settlements for injured workers age fifty-five
6 and older effective 2012, fifty-three and older effective 2015, and
7 fifty and older effective 2016, adjusting pension benefits for prior
8 permanent partial disability awards, eliminating the interest on
9 permanent partial disability award schedules, providing safety and
10 health investment grants, creating the industrial insurance rainy day
11 fund, directing the department of labor and industries to increase its
12 employer, worker, and provider fraud prevention efforts, requiring a
13 performance audit by the joint legislative audit and review committee
14 of workers' compensation claims management in the workers' compensation
15 system to include self-insured claims, and studying occupational
16 disease claims in the workers' compensation system; amending RCW
17 51.32.072, 51.32.075, 51.52.120, 51.32.080, 51.04.110, 51.44.100, and
18 43.79A.040; reenacting and amending RCW 51.32.090; adding new sections
19 to chapter 51.04 RCW; adding a new section to chapter 49.17 RCW; adding
20 a new section to chapter 51.44 RCW; creating new sections; providing an
21 expiration date; and declaring an emergency.

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

2 NEW SECTION. Sec. 1. The legislature finds that Washington
3 state's workers' compensation system should be designed to focus on
4 achieving the best outcomes for injured workers. The state must ensure
5 that the workers' compensation system remains financially healthy in
6 order to provide needed resources for injured workers. Further, the
7 legislature recognizes that reducing the number and cost of long-term
8 disability and pension claims, while strengthening safety programs;
9 addressing workers' compensation system fraud by employers, workers,
10 ~~and providers; finding ways to improve claims management processes;~~
11 studying occupational disease claims in the workers' compensation
12 system; and establishing a fund for purposes of maintaining low,
13 stable, and predictable premium rate increases are all key to ensuring
14 productive worker outcomes and a financially sound system for
15 Washington workers and employers.

16 **PART 1. CREATING THE WASHINGTON STAY-AT-WORK PROGRAM**

17 **Sec. 101.** RCW 51.32.090 and 2007 c 284 s 3 and 2007 c 190 s 1 are
18 each reenacted and amended to read as follows:

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

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

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

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

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

11 ~~(h) No compensation shall be payable under this subsection (3)~~
12 unless the loss of earning power shall exceed five percent.

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

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

22 (b) Whenever the employer of injury requests that a worker who is
23 entitled to temporary total disability under this chapter be certified
24 by a physician or licensed advanced registered nurse practitioner as
25 able to perform available work other than his or her usual work, the
26 employer shall furnish to the physician or licensed advanced registered
27 nurse practitioner, with a copy to the worker, a statement describing
28 the work available with the employer of injury in terms that will
29 enable the physician or licensed advanced registered nurse practitioner
30 to relate the physical activities of the job to the worker's
31 disability. The physician or licensed advanced registered nurse
32 practitioner shall then determine whether the worker is physically able
33 to perform the work described. The worker's temporary total disability
34 payments shall continue until the worker is released by his or her
35 physician or licensed advanced registered nurse practitioner for the
36 work, and begins the work with the employer of injury. If the work
37 thereafter comes to an end before the worker's recovery is sufficient
38 in the judgment of his or her physician or licensed advanced registered

1 nurse practitioner to permit him or her to return to his or her usual
2 job, or to perform other available work offered by the employer of
3 injury, the worker's temporary total disability payments shall be
4 resumed. Should the available work described, once undertaken by the
5 worker, impede his or her recovery to the extent that in the judgment
6 of his or her physician or licensed advanced registered nurse
7 practitioner he or she should not continue to work, the worker's
8 temporary total disability payments shall be resumed when the worker
9 ceases such work.

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

27 (d) If an employer insured with the department offers a worker work
28 pursuant to this subsection (4) and the worker must be provided with
29 training or instruction to be qualified to perform the offered work,
30 the employer shall be eligible for a reimbursement from the department
31 for any tuition, books, fees, and materials required for that training
32 or instruction, up to a maximum of one thousand dollars. Reimbursing
33 an employer for the costs of such training or instruction does not
34 constitute a determination by the department that the worker is
35 eligible for vocational services authorized by RCW 51.32.095 and
36 51.32.099.

37 (e) If an employer insured with the department offers a worker work
38 pursuant to this subsection (4), and the employer provides the worker

1 with clothing that is necessary to allow the worker to perform the
2 offered work, the employer shall be eligible for reimbursement for such
3 clothing from the department, up to a maximum of four hundred dollars.
4 However, an employer shall not receive reimbursement for any clothing
5 it provided to the worker that it normally provides to its workers.
6 The clothing purchased for the worker shall become the worker's
7 property once the work comes to an end.

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

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

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

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

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

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

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

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

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

33 (7) No worker shall receive compensation for or during the day on
34 which injury was received or the three days following the same, unless
35 his or her disability shall continue for a period of fourteen
36 consecutive calendar days from date of injury: PROVIDED, That attempts
37 to return to work in the first fourteen days following the injury shall

1 not serve to break the continuity of the period of disability if the
2 disability continues fourteen days after the injury occurs.

3 ~~((+6+))~~ (8) Should a worker suffer a temporary total disability and
4 should his or her employer at the time of the injury continue to pay
5 him or her the wages which he or she was earning at the time of such
6 injury, such injured worker shall not receive any payment provided in
7 subsection (1) of this section during the period his or her employer
8 shall so pay such wages: PROVIDED, That holiday pay, vacation pay,
9 sick leave, or other similar benefits shall not be deemed to be
10 payments by the employer for the purposes of this subsection.

11 ~~((+7+))~~ (9) In no event shall the monthly payments provided in this
12 section:

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

15	AFTER	PERCENTAGE
16	June 30, 1993	105%
17	June 30, 1994	110%
18	June 30, 1995	115%
19	June 30, 1996	120%

20 (b) For dates of injury or disease manifestation after July 1,
21 2008, be less than fifteen percent of the average monthly wage in the
22 state as computed under RCW 51.08.018 plus an additional ten dollars
23 per month if the worker is married and an additional ten dollars per
24 month for each child of the worker up to a maximum of five children.
25 However, if the monthly payment computed under this subsection ~~((+7+))~~
26 (9)(b) is greater than one hundred percent of the wages of the worker
27 as determined under RCW 51.08.178, the monthly payment due to the
28 worker shall be equal to the greater of the monthly wages of the worker
29 or the minimum benefit set forth in this section on June 30, 2008.

30 ~~((+8+))~~ (10) If the supervisor of industrial insurance determines
31 that the worker is voluntarily retired and is no longer attached to the
32 workforce, benefits shall not be paid under this section.

33 ~~((+9+))~~ (11) The department shall adopt rules as necessary to implement
34 this section.

1 **PART 2. ONE-YEAR COST-OF-LIVING ADJUSTMENT FREEZE WITH NO**
2 **CATCH-UP, AND DELAY IN FIRST COST-OF-LIVING ADJUSTMENTS**

3 **Sec. 201.** RCW 51.32.072 and 1987 c 185 s 34 are each amended to
4 read as follows:

5 (1) Notwithstanding any other provision of law, every surviving
6 spouse and every permanently totally disabled worker or temporarily
7 totally disabled worker, if such worker was unmarried at the time of
8 the worker's injury or was then married but the marriage was later
9 terminated by judicial action, receiving a pension or compensation for
10 ~~temporary total disability under this title pursuant to compensation~~
11 schedules in effect prior to July 1, 1971, shall after July 1, 1975,
12 ~~through June 30, 2011,~~ be paid fifty percent of the average monthly
13 wage in the state as computed under RCW 51.08.018 per month and an
14 amount equal to five percent of such average monthly wage per month to
15 such totally disabled worker, if married at the time of the worker's
16 injury and the marriage was not later terminated by judicial action,
17 and an additional two percent of such average monthly wage for each
18 child of such totally disabled worker at the time of injury in the
19 legal custody of such totally disabled worker or such surviving spouse
20 up to a maximum of five such children. The monthly payments such
21 surviving spouse or totally disabled worker are receiving pursuant to
22 compensation schedules in effect prior to July 1, 1971 shall be
23 deducted from the monthly payments above specified.

24 Where such a surviving spouse has remarried, or where any such
25 child of such worker, whether living or deceased, is not in the legal
26 custody of such worker or such surviving spouse there shall be paid for
27 the benefit of and on account of each such child a sum equal to two
28 percent of such average monthly wage up to a maximum of five such
29 children in addition to any payments theretofore paid under
30 compensation schedules in effect prior to July 1, 1971 for the benefit
31 of and on account of each such child. In the case of any child or
32 children of a deceased worker not leaving a surviving spouse or where
33 the surviving spouse has later died, there shall be paid for the
34 benefit of and on account of each such child a sum equal to two percent
35 of such average monthly wage up to a maximum of five such children in
36 addition to any payments theretofore paid under such schedules for the
37 benefit of and on account of each such child.

1 If the character of the injury or occupational disease is such as
2 to render the worker so physically helpless as to require the hiring of
3 the services of an attendant, the department shall make monthly
4 payments to such attendant for such services as long as such
5 requirement continues but such payments shall not obtain or be
6 operative while the worker is receiving care under or pursuant to the
7 provisions of this title except for care granted at the discretion of
8 the supervisor pursuant to RCW 51.36.010: PROVIDED, That such payments
9 shall not be considered compensation nor shall they be subject to any
10 limitation upon total compensation payments.

~~11 No part of such additional payments shall be payable from the
12 accident fund.~~

13 The director shall pay monthly from the supplemental pension fund
14 such an amount as will, when added to the compensation theretofore paid
15 under compensation schedules in effect prior to July 1, 1971, equal the
16 amounts hereinabove specified.

17 In cases where money has been or shall be advanced to any such
18 person from the pension reserve, the additional amount to be paid under
19 this section shall be reduced by the amount of monthly pension which
20 was or is predicated upon such advanced portion of the pension reserve.

21 (2) In addition to the adjustment under subsection (1) of this
22 section, further adjustments shall be made beginning July 1, 2012, and
23 on each July 1st thereafter. The adjustment shall be the percentage
24 change in the average monthly wage in the state under RCW 51.08.018 for
25 the preceding calendar year, rounded to the nearest whole cent.

26 (3) Compensation due for July 1, 2011, through June 30, 2012, must
27 be paid based on the average monthly wage in the state as computed
28 under RCW 51.08.018 on July 1, 2010.

29 **Sec. 202.** RCW 51.32.075 and 1988 c 161 s 7 are each amended to
30 read as follows:

31 The compensation or death benefits payable pursuant to the
32 provisions of this chapter for temporary total disability, permanent
33 total disability, or death arising out of injuries or occupational
34 diseases shall be adjusted as follows:

35 (1) On July 1, 1982, there shall be an adjustment for those whose
36 right to compensation was established on or after July 1, 1971, and
37 before July 1, 1982. The adjustment shall be determined by multiplying

1 the amount of compensation to which they are entitled by a fraction,
2 the denominator of which shall be the average monthly wage in the state
3 under RCW 51.08.018 for the fiscal year in which such person's right to
4 compensation was established, and the numerator of which shall be the
5 average monthly wage in the state under RCW 51.08.018 on July 1, 1982.

6 (2) In addition to the adjustment established by subsection (1) of
7 this section, there shall be another adjustment on July 1, 1983, for
8 those whose right to compensation was established on or after July 1,
9 1971, and before July 1983, which shall be determined by multiplying
10 the amount of compensation to which they are entitled by a fraction,
11 ~~the denominator of which shall be the average monthly wage in the state~~
12 under RCW 51.08.018 for the fiscal year in which such person's right to
13 compensation was established, and the numerator of which shall be the
14 average monthly wage in the state under RCW 51.08.018 on July 1, 1983.

15 (3) In addition to the adjustments under subsections (1) and (2) of
16 this section, further adjustments shall be made beginning on July 1,
17 1984, and on each July 1st thereafter through July 1, 2010, for those
18 whose right to compensation was established on or after July 1, 1971.
19 The adjustment shall be determined by multiplying the amount of
20 compensation to which they are entitled by a fraction, the denominator
21 of which shall be the average monthly wage in the state under RCW
22 51.08.018 for the fiscal year in which such person's right to
23 compensation was established, and the numerator of which shall be the
24 average monthly wage in the state under RCW 51.08.018 on July 1st of
25 the year in which the adjustment is being made. The department or
26 self-insurer shall adjust the resulting compensation rate to the
27 nearest whole cent, not to exceed the average monthly wage in the state
28 as computed under RCW 51.08.018.

29 (4) In addition to the adjustments under subsections (1), (2), and
30 (3) of this section, further adjustments shall be made beginning July
31 1, 2012, and on each July 1st thereafter for those whose right to
32 compensation was established on or after July 1, 1971. The adjustment
33 shall be the percentage change in the average monthly wage in the state
34 under RCW 51.08.018 for the preceding calendar year, rounded to the
35 nearest whole cent. For claims whose right to compensation was
36 established on or after July 1, 2011, no adjustment shall be made under
37 this subsection until the second July 1st following the date of injury
38 or occupational disease manifestation.

1 **PART 3. CLAIM RESOLUTION STRUCTURED SETTLEMENT AGREEMENTS**

2 **NEW SECTION. Sec. 301.** A new section is added to chapter 51.04
3 RCW to read as follows:

4 The legislature finds that Washington state's workers' compensation
5 system should be designed to focus on achieving the best outcomes for
6 injured workers. Further, the legislature recognizes that controlling
7 pension costs is key to a financially sound workers' compensation
8 system for employers and workers. To these ends, the legislature
9 recognizes that certain workers would benefit from an option that
10 ~~allows them to initiate claim resolution structured settlements in~~
11 order to pursue work or retirement goals independent of the system,
12 provided that sufficient protections for injured workers are included.

13 **NEW SECTION. Sec. 302.** A new section is added to chapter 51.04
14 RCW to read as follows:

15 (1) Notwithstanding RCW 51.04.060 or any other provision of this
16 title, beginning on January 1, 2012, an injured worker who is at least
17 fifty-five years of age on or after January 1, 2012, fifty-three years
18 of age on or after January 1, 2015, or fifty years of age on or after
19 January 1, 2016, may choose from the following: (a) To continue to
20 receive all benefits for which they are eligible under this title, (b)
21 to participate in vocational training if eligible, or (c) to initiate
22 and agree to a resolution of their claim with a structured settlement.

23 (2) (a) As provided in this section, the parties to an allowed claim
24 may initiate and agree to resolve a claim with a structured settlement
25 for all benefits other than medical. Parties as defined in (b) of this
26 subsection may only initiate claim resolution structured settlements if
27 at least one hundred eighty days have passed since the claim was
28 received by the department or self-insurer and the order allowing the
29 claim is final and binding. All requirements of this title regarding
30 entitlement to and payment of benefits will apply during this period.
31 All claim resolution structured settlement agreements must be approved
32 by the board of industrial insurance appeals.

33 (b) For purposes of this section, "parties" means:

34 (i) For a state fund claim, the worker, the employer, and the
35 department. The employer will not be a party if the costs of the claim
36 or claims are no longer included in the calculation of the employer's
37 experience factor used to determine premiums, if they cannot be

1 located, are no longer in business, or they fail to respond or decline
2 to participate after timely notice of the claim resolution settlement
3 process provided by the board and the department.

4 (ii) For a self-insured claim, the worker and the employer.

5 (c) The claim resolution structured settlement agreements shall:

6 (i) Bind the parties with regard to all aspects of a claim except
7 medical benefits unless revoked by one of the parties as provided in
8 subsection (6) of this section;

9 (ii) Provide a periodic payment schedule to the worker equal to at
10 least twenty-five percent but not more than one hundred fifty percent
11 ~~of the average monthly wage in the state pursuant to RCW 51.08.018;~~

12 except for the initial payment which may be up to six times the average
13 monthly wage in the state pursuant to RCW 51.08.018;

14 (iii) Not set aside or reverse an allowance order;

15 (iv) Not subject any employer who is not a signatory to the
16 agreement to any responsibility or burden under any claim; and

17 (v) Not subject any funds covered under this title to any
18 responsibility or burden without prior approval from the director or
19 designee.

20 (d) For state fund claims, the department shall negotiate the claim
21 resolution structured settlement agreement with the worker or their
22 representative and with the employer or employers and their
23 representative or representatives.

24 (e) For self-insured claims, the self-insured employer shall
25 negotiate the agreement with the worker or their representative.
26 Workers of self-insured employers who are unrepresented may request
27 that the office of the ombudsman for self-insured injured workers
28 provide assistance or be present during negotiations.

29 (f) Terms of the agreement may include the parties' agreement that
30 the claim shall remain open for future necessary medical or surgical
31 treatment related to the injury where there is a reasonable expectation
32 such treatment is necessary. The parties may also agree that specific
33 future treatment shall be provided without the application required in
34 RCW 51.32.160.

35 (g) Any claim resolution structured settlement agreement entered
36 into under this section must be in writing and signed by the parties or
37 their representatives and must clearly state that the parties
38 understand and agree to the terms of the agreement.

1 (h) If a worker is not represented by an attorney at the time of
2 signing a claim resolution structured settlement agreement, the parties
3 must forward a copy of the signed agreement to the board with a request
4 for a conference with an industrial appeals judge. The industrial
5 appeals judge must schedule a conference with all parties within
6 fourteen days for the purpose of (i) reviewing the terms of the
7 proposed settlement agreement by the parties; and (ii) ensuring the
8 worker has an understanding of the benefits generally available under
9 this title and that a claim resolution structured settlement agreement
10 may alter the benefits payable on the claim or claims. The judge may
~~11 schedule the initial conference for a later date with the consent of~~
12 the parties.

13 (i) Before approving the agreement, the industrial appeals judge
14 shall ensure the worker has an adequate understanding of the agreement
15 and its consequences to the worker.

16 (j) The industrial appeals judge may approve a claim resolution
17 structured settlement agreement only if the judge finds that the
18 agreement is in the best interest of the worker. When determining
19 whether the agreement is in the best interest of the worker, the
20 industrial appeals judge shall consider the following factors, taken as
21 a whole, with no individual factor being determinative:

22 (i) The nature and extent of the injuries and disabilities of the
23 worker;

24 (ii) The age and life expectancy of the injured worker;

25 (iii) Other benefits the injured worker is receiving or is entitled
26 to receive and the effect a claim resolution structured settlement
27 agreement might have on those benefits; and

28 (iv) The marital or domestic partnership status of the injured
29 worker.

30 (k) Within seven days after the conference, the industrial appeals
31 judge shall issue an order allowing or rejecting the claim resolution
32 structured settlement agreement. There is no appeal from the
33 industrial appeals judge's decision.

34 (l) If the industrial appeals judge issues an order allowing the
35 claim resolution structured settlement agreement, the order must be
36 submitted to the board.

37 (3) Upon receiving the agreement, the board shall approve it within
38 thirty working days of receipt unless it finds that:

1 (a) The parties have not entered into the agreement knowingly and
2 willingly;

3 (b) The agreement does not meet the requirements of a claim
4 resolution structured settlement agreement;

5 (c) The agreement is the result of a material misrepresentation of
6 law or fact;

7 (d) The agreement is the result of harassment or coercion; or

8 (e) The agreement is unreasonable as a matter of law.

9 (4) If a worker is represented by an attorney at the time of
10 signing a claim resolution structured settlement agreement, the parties
~~11 shall submit the agreement directly to the board without the conference~~
12 described in this section.

13 (5) If the board approves the agreement, it shall provide notice to
14 all parties. The department shall place the agreement in the
15 applicable claim file or files.

16 (6) A party may revoke consent to the claim resolution structured
17 settlement agreement by providing written notice to the other parties
18 and the board within thirty days after the date the agreement is
19 approved by the board.

20 (7) To the extent the worker is entitled to any benefits while a
21 claim resolution structured settlement agreement is being negotiated or
22 during the revocation period of an agreement, the benefits must be paid
23 pursuant to the requirements of this title until the agreement becomes
24 final.

25 (8) A claim resolution structured settlement agreement that meets
26 the conditions in this section and that has become final and binding as
27 provided in this section is binding on all parties to the agreement as
28 to its terms and the injuries and occupational diseases to which the
29 agreement applies. A claim resolution structured settlement agreement
30 that has become final and binding is not subject to appeal.

31 (9) All payments made to a worker pursuant to a final claim
32 resolution structured settlement agreement must be reported to the
33 department as claims costs pursuant to this title. If a self-insured
34 employer contracts with a third-party administrator for claim services
35 and the payment of benefits under this title, the third-party
36 administrator shall also disburse the structured settlement payments
37 pursuant to the agreement.

1 (10) Claims closed pursuant to a claim resolution structured
2 settlement agreement can be reopened pursuant to RCW 51.32.160 for
3 medical treatment only. Further temporary total, temporary partial,
4 permanent partial, or permanent total benefits are not payable under
5 the same claim or claims for which a claim resolution structured
6 settlement agreement has been approved by the board and has become
7 final.

8 (11) Parties aggrieved by the failure of any other party to comply
9 with the terms of a claim resolution structured settlement agreement
10 have one year from the date of failure to comply to petition to the
11 board. ~~If the board determines that a party has failed to comply with~~
12 an agreement, they will order compliance and will impose a penalty
13 payable to the aggrieved party of up to twenty-five percent of the
14 monetary amount unpaid at the time the petition for noncompliance was
15 filed. The board will also decide on any disputes as to attorneys'
16 fees for services related to claim resolution structured settlement
17 agreements.

18 (12) Parties and their representatives may not use settlement
19 offers or the claim resolution structured settlement agreement process
20 to harass or coerce any party. If the department determines that an
21 employer has engaged in a pattern of harassment or coercion, the
22 employer may be subject to penalty or corrective action, and may be
23 removed from the retrospective rating program or be decertified from
24 self-insurance under RCW 51.14.030.

25 NEW SECTION. Sec. 303. A new section is added to chapter 51.04
26 RCW to read as follows:

27 The department must maintain copies of all claim resolution
28 structured settlement agreements entered into between the parties and
29 furnish copies of such agreements to any party actively negotiating a
30 subsequent claim resolution structured settlement agreement with the
31 worker on any allowed claim when requested. An employer may not
32 consider a prior agreement when making a decision about hiring or the
33 terms or conditions of employment.

34 Sec. 304. RCW 51.52.120 and 2007 c 490 s 3 are each amended to
35 read as follows:

36 (1) Except for claim resolution structured settlement agreements,

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

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

32 (3) For claim resolution structured settlement agreements, fees for
33 attorney services are limited to fifteen percent of the total amount to
34 be paid to the worker after the agreement becomes final. The board
35 will also decide on any disputes as to attorneys' fees for services
36 related to claim resolution structured settlement agreements consistent
37 with the procedures in subsection (2) of this section.

1 (4) In an appeal to the board involving the presumption established
2 under RCW 51.32.185, the attorney's fee shall be payable as set forth
3 under RCW 51.32.185.

4 ((4)). (5) Any person who violates this section is guilty of a
5 misdemeanor.

6 NEW SECTION. **Sec. 305.** The department of labor and industries and
7 the board of industrial insurance appeals shall adopt rules as
8 necessary to implement sections 302 and 303 of this act.

9 ~~NEW SECTION. Sec. 306. A new section is added to chapter 51.04~~
10 RCW to read as follows:

11 On December 1, 2011, and annually thereafter through December 1,
12 2014, the department shall report annually to the appropriate
13 committees of the legislature on the implementation of claim resolution
14 structured settlement agreements. In calendar years 2015, 2019, and
15 2023, the department shall contract for an independent study of claim
16 resolution structured settlement agreements approved by the board under
17 this section. The study must be performed by a researcher with
18 experience in workers' compensation issues. When selecting the
19 independent researcher, the department shall consult with the workers'
20 compensation advisory committee. The study must evaluate the quality
21 and effectiveness of structured settlement agreements of state fund and
22 self-insured claims, provide information on the impact of these
23 agreements to the state fund and to self-insured employers, and
24 evaluate the outcomes of workers who have resolved their claims through
25 the claim resolution structured settlement agreement process. The
26 study must be submitted to the appropriate committees of the
27 legislature.

28 **PART 4. DEDUCTING PRIOR PERMANENT PARTIAL DISABILITY**
29 **AWARDS FROM PENSIONS, AND ELIMINATING INTEREST ON UNPAID PERMANENT**
30 **PARTIAL DISABILITY BENEFITS**

31 **Sec. 401.** RCW 51.32.080 and 2007 c 172 s 1 are each amended to
32 read as follows:

33 (1) (a) Until July 1, 1993, for the permanent partial disabilities

1 here specifically described, the injured worker shall receive
 2 compensation as follows:

3 LOSS BY AMPUTATION

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

1	Of thumb at metacarpophalangeal joint or	19,440.00
2	with resection of carpometacarpal	
3	bone.....	
4	Of thumb at interphalangeal joint.....	9,720.00
5	Of index finger at metacarpophalangeal	12,150.00
6	joint or with resection of metacarpal	
7	bone.....	
8	Of index finger at proximal	9,720.00
9	interphalangeal joint.....	
10	Of index finger at distal interphalangeal	5,346.00
11	joint.....	
12	Of middle finger at metacarpophalangeal	9,720.00
13	joint or with resection of metacarpal	
14	bone.....	
15	Of middle finger at proximal	7,776.00
16	interphalangeal joint.....	
17	Of middle finger at distal interphalangeal	4,374.00
18	joint.....	
19	Of ring finger at metacarpophalangeal	4,860.00
20	joint or with resection of metacarpal	
21	bone.....	
22	Of ring finger at proximal interphalangeal	3,888.00
23	joint.....	
24	Of ring finger at distal interphalangeal	2,430.00
25	joint.....	
26	Of little finger at metacarpophalangeal	2,430.00
27	joint or with resection of metacarpal	
28	bone.....	
29	Of little finger at proximal interphalangeal	1,944.00
30	joint.....	
31	Of little finger at distal interphalangeal	972.00
32	joint.....	
33	MISCELLANEOUS	
34	Loss of one eye by enucleation.....	21,600.00
35	Loss of central visual acuity in one eye....	18,000.00
36	Complete loss of hearing in both ears.....	43,200.00
37	Complete loss of hearing in one ear.....	7,200.00

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

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

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

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

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

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

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

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

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

19 (c) Until July 1, 1993, the total compensation for all unspecified
20 permanent partial disabilities resulting from the same injury shall not
21 exceed the sum of ninety thousand dollars. Beginning on July 1, 1993,
22 total compensation for all unspecified permanent partial disabilities
23 resulting from the same injury shall not exceed a sum calculated as
24 follows:

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

27 (ii) Beginning on July 1, 1994, and each July 1 thereafter, the sum
28 prescribed in (b)(i) of this subsection shall be adjusted as provided
29 in subsection (1)(b)(ii) of this section.

30 (4) If permanent partial disability compensation is followed by
31 permanent total disability compensation, (~~any portion of the permanent~~
32 ~~partial disability compensation which exceeds the amount that would~~
33 ~~have been paid the injured worker if permanent total disability~~
34 ~~compensation had been paid in the first instance) all permanent
35 partial disability compensation paid to the worker under the claim or
36 claims for which total permanent disability compensation is awarded
37 shall be, at the choosing of the injured worker, either: (a) Deducted
38 from the worker's monthly pension benefits (~~in an amount not to exceed~~~~

1 ~~twenty five percent of the monthly amount due from the department or~~
2 ~~self insurer or one sixth of the total overpayment, whichever is less))~~
3 ~~until the total award or awards paid are recovered; or (b) deducted~~
4 ~~from the pension reserve of such injured worker and his or her monthly~~
5 ~~compensation payments shall be reduced accordingly. Any interest paid~~
6 ~~on any permanent partial disability compensation may not be deducted~~
7 ~~from the pension benefits or pension reserve. The provisions of this~~
8 ~~subsection apply to all permanent total disability determinations~~
9 ~~issued on or after July 1, 2011.~~

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

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

1 children of such claimant, and if there are no such dependent children,
2 then to such other dependents as defined by this title.

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

5 **PART 5. SAFETY AND HEALTH INVESTMENT GRANTS**

6 NEW SECTION. Sec. 501. A new section is added to chapter 49.17
7 RCW to read as follows:

8 (1) The director is authorized to provide funding from the medical
~~9 aid fund established under RCW 51.44.020, by grant or contract, for~~
10 safety and health investment projects for workplaces insured for
11 workers' compensation through the department's state fund. This shall
12 include projects to: Prevent workplace injuries, illnesses, and
13 fatalities; create early return-to-work programs; and reduce long-term
14 disability through the cooperation of employers and employees or their
15 representatives.

16 (2) Awards may be granted to organizations such as, but not limited
17 to, trade associations, business associations, employers, employees,
18 labor unions, employee organizations, joint labor and management
19 groups, and educational institutions in collaboration with state fund
20 employer and employee representatives.

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

26 (4) Funds for awards shall be distributed as follows: At least
27 twenty-five percent for projects designed to develop and implement
28 innovative and effective return-to-work programs for injured workers;
29 at least twenty-five percent for projects that specifically address the
30 needs of small businesses; and at least fifty percent for projects that
31 foster workplace injury and illness prevention by addressing priorities
32 identified by the department in cooperation with the Washington
33 industrial safety and health act advisory committee and the workers'
34 compensation advisory committee.

35 (5) The department shall adopt rules as necessary to implement this
36 section.

1 **Sec. 502.** RCW 51.04.110 and 2010 c 8 s 14001 are each amended to
2 read as follows:

3 The director shall appoint a workers' compensation advisory
4 committee composed of ten members: Three representing subject workers,
5 three representing subject employers, one representing self-insurers,
6 one representing workers of self-insurers, and two ex officio members,
7 without a vote, one of whom shall be the chair of the board of
8 industrial appeals and the other the representative of the department.
9 The member representing the department shall be chair. This committee
10 shall conduct a continuing study of any aspects of workers'
11 ~~compensation as the committee shall determine require their~~
12 ~~consideration and shall assist in the identification of priorities for~~
13 ~~safety and health investment projects as provided in chapter 49.17 RCW.~~
14 The committee shall report its findings to the department or the board
15 of industrial insurance appeals for such action as deemed appropriate.
16 The members of the committee shall be appointed for a term of three
17 years commencing on July 1, 1971 and the terms of the members
18 representing the workers and employers shall be staggered so that the
19 director shall designate one member from each such group initially
20 appointed whose term shall expire on June 30, 1972 and one member from
21 each such group whose term shall expire on June 30, 1973. The members
22 shall serve without compensation, but shall be entitled to travel
23 expenses as provided in RCW 43.03.050 and 43.03.060 (~~as now existing~~
24 ~~or hereafter amended~~). The committee may hire such experts, if any,
25 as it shall require to discharge its duties, and may utilize such
26 personnel and facilities of the department and board of industrial
27 insurance appeals as it shall need without charge. All expenses of
28 this committee shall be paid by the department.

29 **PART 6. INDUSTRIAL INSURANCE RAINY DAY FUND**

30 **NEW SECTION. Sec. 601.** A new section is added to chapter 51.44
31 RCW to read as follows:

- 32 (1) There shall be, in the custody of the state treasurer, a fund
33 to be known and designated as the industrial insurance rainy day fund.
34 (2) The director shall be the administrator of the fund, may
35 transfer moneys into and out of the fund only as authorized by this

1 section, and shall separately account for moneys in the fund from the
2 accident and medical aid funds. The assets of this fund shall not be
3 used for any purposes other than meeting the obligations of this title.

4 (3) Before proposing premium rates as provided in RCW 51.16.035,
5 the director shall determine whether the assets of the accident and
6 medical aid funds combined are at least ten percent but not more than
7 thirty percent in excess of its funded liabilities, and if so transfer
8 any excess to the industrial insurance rainy day fund, unless doing so
9 would:

10 (a) Threaten the department's ability to meet the obligations of
11 ~~this title;~~

12 (b) Result in total assets of the rainy day fund combined with the
13 assets of the accident and medical aid funds to exceed thirty percent
14 of the accident and medical aid funds' liabilities.

15 (4) The workers' compensation advisory committee shall create a
16 finance subcommittee made up of six members, three of whom shall
17 represent business, and three of whom shall represent workers. The
18 director or director's designee shall chair the committee. The
19 committee shall provide recommendations for any changes to subsection
20 (3)(b) of this section to the appropriate committees of the legislature
21 by December 1, 2011.

22 (5) When adopting premium rates, the director may transfer moneys
23 from the industrial insurance rainy day fund into the accident fund or
24 medical aid fund upon finding that the transfer is necessary to reduce
25 a rate increase or aid businesses in recovering from or during economic
26 recessions. The director may also transfer moneys from this fund at
27 any time liabilities increase so that total liabilities exceed assets
28 of the accident fund, medical aid fund, or both.

29 (6) Notwithstanding chapter 51.52 RCW, the director's decisions
30 regarding transfers into and out of the industrial insurance rainy day
31 fund are not reviewable by any court or tribunal, but must be announced
32 as part of the rule-making process for setting premium rates, and must
33 be part of the department's rule-making file required by chapter 34.05
34 RCW.

35 **Sec. 602.** RCW 51.44.100 and 1990 c 80 s 1 are each amended to read
36 as follows:

37 Whenever, in the judgment of the state investment board, there

1 shall be in the accident fund, medical aid fund, reserve fund,
2 industrial insurance rainy day fund, or the supplemental pension fund,
3 funds in excess of that amount deemed by the state investment board to
4 be sufficient to meet the current expenditures properly payable
5 therefrom, the state investment board may invest and reinvest such
6 excess funds in the manner prescribed by RCW 43.84.150, and not
7 otherwise.

8 The state investment board may give consideration to the investment
9 of excess funds in federally insured student loans made to persons in
10 vocational training or retraining or reeducation programs. The state
11 ~~investment board may make such investments by purchasing from savings~~
12 and loan associations, commercial banks, mutual savings banks, credit
13 unions and other institutions authorized to be lenders under the
14 federally insured student loan act, organized under federal or state
15 law and operating in this state loans made by such institutions to
16 residents of the state of Washington particularly for the purpose of
17 vocational training or reeducation: PROVIDED, That the state
18 investment board shall purchase only that portion of any loan which is
19 guaranteed or insured by the United States of America, or by any agency
20 or instrumentality of the United States of America: PROVIDED FURTHER,
21 That the state investment board is authorized to enter into contracts
22 with such savings and loan associations, commercial banks, mutual
23 savings banks, credit unions, and other institutions authorized to be
24 lenders under the federally insured student loan act to service loans
25 purchased pursuant to this section at an agreed upon contract price.

26 **Sec. 603.** RCW 43.79A.040 and 2011 c 274 s 4 are each amended to
27 read as follows:

28 (1) Money in the treasurer's trust fund may be deposited, invested,
29 and reinvested by the state treasurer in accordance with RCW 43.84.080
30 in the same manner and to the same extent as if the money were in the
31 state treasury, and may be commingled with moneys in the state treasury
32 for cash management and cash balance purposes.

33 (2) All income received from investment of the treasurer's trust
34 fund must be set aside in an account in the treasury trust fund to be
35 known as the investment income account.

36 (3) The investment income account may be utilized for the payment
37 of purchased banking services on behalf of treasurer's trust funds

1 including, but not limited to, depository, safekeeping, and
2 disbursement functions for the state treasurer or affected state
3 agencies. The investment income account is subject in all respects to
4 chapter 43.88 RCW, but no appropriation is required for payments to
5 financial institutions. Payments must occur prior to distribution of
6 earnings set forth in subsection (4) of this section.

7 (4)(a) Monthly, the state treasurer must distribute the earnings
8 credited to the investment income account to the state general fund
9 except under (b), (c), and (d) of this subsection.

10 (b) The following accounts and funds must receive their
11 ~~proportionate share of earnings based upon each account's or fund's~~

12 average daily balance for the period: The Washington promise
13 scholarship account, the college savings program account, the
14 Washington advanced college tuition payment program account, the
15 accessible communities account, the community and technical college
16 innovation account, the agricultural local fund, the American Indian
17 scholarship endowment fund, the foster care scholarship endowment fund,
18 the foster care endowed scholarship trust fund, the students with
19 dependents grant account, the basic health plan self-insurance reserve
20 account, the contract harvesting revolving account, the Washington
21 state combined fund drive account, the commemorative works account, the
22 county enhanced 911 excise tax account, the Washington international
23 exchange scholarship endowment fund, the toll collection account, the
24 developmental disabilities endowment trust fund, the energy account,
25 the fair fund, the family leave insurance account, the food animal
26 veterinarian conditional scholarship account, the fruit and vegetable
27 inspection account, the future teachers conditional scholarship
28 account, the game farm alternative account, the GET ready for math and
29 science scholarship account, the Washington global health technologies
30 and product development account, the grain inspection revolving fund,
31 the industrial insurance rainy day fund, the juvenile accountability
32 incentive account, the law enforcement officers' and firefighters' plan
33 2 expense fund, the local tourism promotion account, the pilotage
34 account, the produce railcar pool account, the regional transportation
35 investment district account, the rural rehabilitation account, the
36 stadium and exhibition center account, the youth athletic facility
37 account, the self-insurance revolving fund, the sulfur dioxide
38 abatement account, the children's trust fund, the Washington horse

1 racing commission Washington bred owners' bonus fund and breeder awards
2 account, the Washington horse racing commission class C purse fund
3 account, the individual development account program account, the
4 Washington horse racing commission operating account (earnings from the
5 Washington horse racing commission operating account must be credited
6 to the Washington horse racing commission class C purse fund account),
7 the life sciences discovery fund, the Washington state heritage center
8 account, the reduced cigarette ignition propensity account, and the
9 reading achievement account.

10 (c) The following accounts and funds must receive eighty percent of
~~11 their proportionate share of earnings based upon each account's or~~
12 fund's average daily balance for the period: The advanced right-of-way
13 revolving fund, the advanced environmental mitigation revolving
14 account, the federal narcotics asset forfeitures account, the high
15 occupancy vehicle account, the local rail service assistance account,
16 and the miscellaneous transportation programs account.

17 (d) Any state agency that has independent authority over accounts
18 or funds not statutorily required to be held in the custody of the
19 state treasurer that deposits funds into a fund or account in the
20 custody of the state treasurer pursuant to an agreement with the office
21 of the state treasurer shall receive its proportionate share of
22 earnings based upon each account's or fund's average daily balance for
23 the period.

24 (5) In conformance with Article II, section 37 of the state
25 Constitution, no trust accounts or funds shall be allocated earnings
26 without the specific affirmative directive of this section.

27 **PART 7. INITIATIVE TO ADDRESS WORKER, EMPLOYER, AND PROVIDER FRAUD**

28 NEW SECTION. **Sec. 701.** A new section is added to chapter 51.04
29 RCW to read as follows:

30 (1) The legislature finds that the department is successfully
31 addressing employer fraud and the underground economy, helping ensure
32 that employers who appropriately report and pay premiums can be
33 competitive. Efforts focus on prevention, education, and enforcement
34 by identifying industries for targeted audits, informing industry
35 members and providing the opportunity for voluntary compliance, and
36 ultimately identifying employers for audit based on proven criteria.

1 (2) To ensure the appropriate use of workers' compensation funds,
2 the legislature directs the department of labor and industries to
3 continue applying these proven best practices to employer fraud and to
4 apply the same best practices to address instances of worker and
5 provider fraud, including but not limited to:

6 (a) Participating in a national information exchange with other
7 workers' compensation insurers to avoid duplication of claims and
8 benefits;

9 (b) Increasing public awareness of employer, worker, and provider
10 fraud issues and how to report suspected fraud;

~~11 (c) Establishing criteria for the periodic review of total~~
12 permanent disability pension recipients including their level of
13 disability and physical activity to determine whether they can be
14 gainfully employed; and

15 (d) Identifying provider billing patterns to target potentially
16 abusive practices.

17 (3) The provisions of RCW 51.28.070 shall not be a barrier to the
18 department's participation in a national information exchange as
19 required in subsection (2) (a) of this section.

20 (4) The department's activities must include approaches to prevent,
21 educate, and ensure compliance by providers, employers, and workers.
22 The department shall provide a report to the governor and the
23 appropriate legislative committees by December 1, 2012, that describes
24 the agency's efforts and outcomes and makes recommendations for
25 statutory changes to address barriers for successfully addressing
26 provider, employer, and worker fraud.

27 **PART 8. PERFORMANCE AUDIT OF THE WORKERS' COMPENSATION**
28 **CLAIMS MANAGEMENT SYSTEM**

29 NEW SECTION. Sec. 801. A new section is added to chapter 51.04
30 RCW to read as follows:

31 (1) The joint legislative audit and review committee, in
32 consultation with the department of labor and industries and the
33 workers' compensation advisory committee, shall conduct a performance
34 audit of the workers' compensation claims management system, including
35 self-insured claims. The joint legislative audit and review committee

1 may contract with an independent expert in workers' compensation claims
2 management to assist with the audit.

3 (2) The audit shall:

4 (a) Evaluate the extent to which the department: (i) Makes fair
5 and timely decisions, and resolves complaints and disputes in a timely,
6 fair, and effective manner; and (ii) communicates with employers and
7 workers in a timely, responsive, and accurate manner, including
8 communication about review and appeal rights, and including the use of
9 plain language and sufficient opportunities for face-to-face meetings;

10 (b) Determine if current claims management organization and service
~~11 delivery models are the most efficient available; analyze organization~~

12 and delivery for retrospective rating plan participants as compared to
13 nonparticipants to identify differences and how those differences
14 influence retrospective rating plan refunds; and determine whether
15 current initiatives improve service delivery, meet the needs of current
16 and future workers and employers, improve public education and
17 outreach, and are otherwise measurable; and

18 (c) Make recommendations regarding administrative changes that
19 should be made to improve efficiency while maintaining high levels of
20 quality service to help address system costs, and any needed
21 legislative changes to implement the recommendations.

22 (3) The joint legislative audit and review committee shall submit
23 progress reports by December 1, 2012, and December 1, 2013, and the
24 results of the audit by June 30, 2015, to the appropriate committees of
25 the legislature.

26 (4) This section expires December 31, 2015.

27

PART 9. OCCUPATIONAL DISEASE STUDY

28 NEW SECTION. **Sec. 901.** The department of labor and industries
29 shall contract with an independent entity with research experience in
30 workers' compensation issues to study occupational disease claims in
31 the Washington workers' compensation system. When selecting the
32 independent researcher, the department shall consult with the workers'
33 compensation advisory committee. The workers' compensation advisory
34 committee shall recommend to the department the independent researcher
35 to conduct the study. The study shall include, but not be limited to,
36 an examination of the frequency and severity of occupational disease

1 claims for state fund and self-insured employers; the impact of these
2 claims on long-term disability and pension trends; the statutory
3 definition of occupational disease and its interpretation and
4 comparison to definitions in other states and jurisdictions; and
5 comparison of the statute of limitations for filing occupational
6 disease claims for Washington and other states and jurisdictions. The
7 study must be submitted to the appropriate committees of the
8 legislature by December 1, 2012.

9

PART 10. SEVERABILITY

10 NEW SECTION. Sec. 1001. If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

14

PART 11. EFFECTIVE DATE

15 NEW SECTION. Sec. 1101. This act is necessary for the immediate
16 preservation of the public peace, health, or safety, or support of the
17 state government and its existing public institutions, and takes effect
18 immediately.

Passed by the House May 23, 2011.
Passed by the Senate May 23, 2011.
Approved by the Governor June 15, 2011.
Filed in Office of Secretary of State June 15, 2011.

HOLMES WEDDLE & BARCOTT PC

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Superior Court Case Number: 16-2-02175-3

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