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ENGROSSED HOUSE BILL 2123

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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 (b) 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:

	AFTER	PERCENTAGE
15		
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 (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	Of leg at ankle (Syme) . . . . .	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.

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