

CHAPTER 160

[House Bill No. 1292]

LIQUOR LICENSEES, YOUNG EMPLOYEES

AN ACT Relating to employees of liquor-licensed premises who are eighteen to twenty-one years of age; and amending RCW 66.44.350.

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

Sec. 1. Section 1, chapter 204, Laws of 1975 1st ex. sess. and RCW 66.44.350 are each amended to read as follows:

Notwithstanding provisions of RCW 66.44.310, employees of class A, C, D and/or H licensees eighteen years of age and over may take orders for, serve and sell liquor in any part of the licensed premises except cocktail lounges, bars, or other areas classified by the Washington state liquor control board as off-limits to persons under twenty-one years of age: **PROVIDED**, That such employees may enter such restricted areas ~~((for the following purposes:))~~ to perform work assignments including picking up liquor for service in other parts of the licensed premises, ((to)) performing clean up work, ((to)) setting up and ((arrange)) arranging tables, ((and-to)) delivering supplies, delivering messages, serving food, and seating patrons: **PROVIDED FURTHER**, That such employees shall remain in the areas off-limits to minors no longer than is necessary to carry out their aforementioned duties: **PROVIDED FURTHER**, That such employees shall not be permitted to perform activities or functions of a bartender.

Passed the House March 9, 1988.

Passed the Senate March 5, 1988.

Approved by the Governor March 21, 1988.

Filed in Office of Secretary of State March 21, 1988.

CHAPTER 161

[Engrossed House Bill No. 1396]

WORKERS' COMPENSATION—BENEFITS REVISED—TIPS AS WAGES

AN ACT Relating to industrial insurance disability benefits; amending RCW 51.32.050, 51.32.180, 51.32.080, 51.32.090, 51.32.075, 51.44.080, 51.32.095, 51.32.250, 51.32.160, 51.08.178, and 51.32.055; amending section 2, chapter 55, Laws of 1986 (uncodified); reenacting and amending RCW 51.32.060; reenacting RCW 51.32.090; adding a new section to chapter 51.32 RCW; creating a new section; and providing effective dates.

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

Sec. 1. Section 51.32.060, chapter 23, Laws of 1961 as last amended by section 5, chapter 58, Laws of 1986 and by section 1, chapter 59, Laws of 1986 and RCW 51.32.060 are each reenacted and amended to read as follows:

(1) When the supervisor of industrial insurance shall determine that permanent total disability results from the injury, the worker shall receive monthly during the period of such disability:

~~((1))~~ (a) If married at the time of injury, sixty-five percent of his or her wages but not less than two hundred fifteen dollars per month.

~~((2))~~ (b) If married with one child at the time of injury, sixty-seven percent of his or her wages but not less than two hundred fifty-two dollars per month.

~~((3))~~ (c) If married with two children at the time of injury, sixty-nine percent of his or her wages but not less than two hundred eighty-three dollars.

~~((4))~~ (d) If married with three children at the time of injury, seventy-one percent of his or her wages but not less than three hundred six dollars per month.

~~((5))~~ (e) If married with four children at the time of injury, seventy-three percent of his or her wages but not less than three hundred twenty-nine dollars per month.

~~((6))~~ (f) If married with five or more children at the time of injury, seventy-five percent of his or her wages but not less than three hundred fifty-two dollars per month.

~~((7))~~ (g) If unmarried at the time of the injury, sixty percent of his or her wages but not less than one hundred eighty-five dollars per month.

~~((8))~~ (h) If unmarried with one child at the time of injury, sixty-two percent of his or her wages but not less than two hundred twenty-two dollars per month.

~~((9))~~ (i) If unmarried with two children at the time of injury, sixty-four percent of his or her wages but not less than two hundred fifty-three dollars per month.

~~((10))~~ (j) If unmarried with three children at the time of injury, sixty-six percent of his or her wages but not less than two hundred seventy-six dollars per month.

~~((11))~~ (k) If unmarried with four children at the time of injury, sixty-eight percent of his or her wages but not less than two hundred ninety-nine dollars per month.

~~((12))~~ (l) If unmarried with five or more children at the time of injury, seventy percent of his or her wages but not less than three hundred twenty-two dollars per month.

~~((13))~~ (2) For any period of time where both husband and wife are entitled to compensation as temporarily or totally disabled workers, only that spouse having the higher wages of the two shall be entitled to claim their child or children for compensation purposes.

~~((14))~~ (3) In case of permanent total disability, if the character of the injury is such as to render the worker so physically helpless as to require the hiring of the services of an attendant, the department shall make

monthly payments to such attendant for such services as long as such requirement continues, but such payments shall not obtain or be operative while the worker is receiving care under or pursuant to the provisions of chapter 51.36 RCW and RCW 51.04.105.

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

~~((+6))~~ (5) In no event shall the monthly payments provided in this section exceed ~~((seventy=five))~~ one hundred percent of the average monthly wage in the state as computed under the provisions of RCW 51.08.018, except that this limitation shall not apply to the payments provided for in subsection ~~((+4))~~ (3) of this section.

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

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

Sec. 2. Section 51.32.050, chapter 23, Laws of 1961 as last amended by section 3, chapter 58, Laws of 1986 and RCW 51.32.050 are each amended to read as follows:

(1) Where death results from the injury the expenses of burial not to exceed two thousand dollars shall be paid.

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

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

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

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

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

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

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

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

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

(d) In no event shall the monthly payments provided in subsection (2) of this section exceed ~~((seventy-five))~~ one hundred percent of the average monthly wage in the state as computed under RCW 51.08.018.

(e) In addition to the monthly payments provided for in (2)(a) through (2)(c) of this section, a surviving spouse or child or children of such worker if there is no surviving spouse, or dependent parent or parents, if there is no surviving spouse or child or children of any such deceased worker shall be forthwith paid the sum of one thousand six hundred dollars, any such children, or parents to share and share alike in said sum.

(f) Upon remarriage of a surviving spouse the monthly payments for the child or children shall continue as provided in this section, but the

monthly payments to such surviving spouse shall cease at the end of the month during which remarriage occurs. However, after September 8, 1975, an otherwise eligible surviving spouse of a worker who died at any time prior to or after September 8, 1975, shall have an option of:

(i) Receiving, once and for all, a lump sum of seventy-five hundred dollars or fifty percent of the then remaining annuity value of his or her pension, whichever is the lesser: PROVIDED, That if the injury occurred prior to July 1, 1971, the remarriage benefit lump sum available shall be as provided in the remarriage benefit schedules then in effect; or

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

(g) If the surviving spouse during the remarriage should die without having previously received the lump sum payment provided in (2)(f)(i) of this section, his or her estate shall be entitled to receive the sum of seventy-five hundred dollars or fifty percent of the then remaining annuity value of his or her pension whichever is the lesser.

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

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

(3) If there is a child or children and no surviving spouse of the deceased worker or the surviving spouse is not eligible for benefits under this title, a sum equal to thirty-five percent of the wages of the deceased worker shall be paid monthly for one child and a sum equivalent to fifteen percent of such wage shall be paid monthly for each additional child, the total of such sum to be divided among such children, share and share alike: PROVIDED, That benefits under this subsection or subsection (4) shall not exceed sixty-five percent of the wages of the deceased worker at the time of his or her death or ~~((seventy-five))~~ one hundred percent of the average monthly wage in the state as defined in RCW 51.08.018, whichever is the lesser of the two sums.

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

(5) If the worker leaves no surviving spouse or child, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty percent of the average monthly support actually received by such dependent from the worker during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed sixty-five percent of the wages of the deceased worker at the time of the death or (~~seventy-five~~) one hundred percent of the average monthly wage in the state as defined in RCW 51.08.018, whichever is the lesser of the two sums. If any dependent is under the age of eighteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent reaches the age of eighteen years except such payments shall continue until the dependent reaches age twenty-three while permanently enrolled at a full time course in an accredited school. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

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

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

Sec. 3. Section 2, chapter 59, Laws of 1986 and RCW 51.32.090 are each amended to read as follows:

(1) When the total disability is only temporary, the schedule of payments contained in (~~subsections (1) through (13) of~~) RCW 51.32.060 (~~as amended~~) (1) and (2) shall apply, so long as the total disability continues.

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

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

in the proportion which the new earning power shall bear to the old. No compensation shall be payable unless the loss of earning power shall exceed five percent. However, during the period a worker returns to light-duty work, receives disability leave supplement payments pursuant to RCW 41.04.500 through 41.04.530, and is otherwise eligible for compensation under this section, the worker shall continue to receive such compensation at the rate provided under RCW 51.32.060 (1) (~~through (13))~~) and (2).

(4) Whenever an employer requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician as able to perform available work other than his or her usual work, the employer shall furnish to the physician, with a copy to the worker, a statement describing the available work in terms that will enable the physician to relate the physical activities of the job to the worker's disability. The physician shall then determine whether the worker is physically able to perform the work described. If the worker is released by his or her physician for said work, and the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her physician to permit him or her to return to his or her usual job, or to perform other available work, the worker's temporary total disability payments shall be resumed. Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

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

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

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

(6) Should a worker suffer a temporary total disability and should his or her employer at the time of the injury continue to pay him or her the wages which he or she was earning at the time of such injury, such injured worker shall not receive any payment provided in subsection (1) of this section during the period his or her employer shall so pay such wages. This limitation does not apply to disability leave supplement payments made pursuant to RCW 41.04.500 through 41.04.530.

(7) In no event shall the monthly payments provided in this section exceed (~~seventy-five~~) one hundred percent of the average monthly wage in the state as computed under the provisions of RCW 51.08.018.

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

Sec. 4. Section 51.32.090, chapter 23, Laws of 1961 as last amended by section 3, chapter 59, Laws of 1986 and by section 3 of this 1988 act and RCW 51.32.090 are each reenacted to read as follows:

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

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

(3) As soon as recovery is so complete that the present earning power of the worker, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall continue in the proportion which the new earning power shall bear to the old. No compensation shall be payable unless the loss of earning power shall exceed five percent.

(4) Whenever an employer requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician as able to perform available work other than his or her usual work, the employer shall furnish to the physician, with a copy to the worker, a statement describing the available work in terms that will enable the physician to relate the physical activities of the job to the worker's disability. The physician shall then determine whether the worker is physically able to perform the work described. If the worker is released by his or her physician for said work, and the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her physician to permit him or her to return to his or her usual job, or to perform other available work, the worker's temporary total disability payments shall be resumed. Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

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

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

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

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

(7) In no event shall the monthly payments provided in this section exceed one hundred percent of the average monthly wage in the state as computed under the provisions of RCW 51.08.018.

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

Sec. 5. Section 51.32.180, chapter 23, Laws of 1961 as last amended by section 53, chapter 350, Laws of 1977 ex. sess. and RCW 51.32.180 are each amended to read as follows:

Every worker who suffers disability from an occupational disease in the course of employment under the mandatory or elective adoption provisions of this title, or his or her family and dependents in case of death of the worker from such disease or infection, shall receive the same compensation benefits and medical, surgical and hospital care and treatment as would be paid and provided for a worker injured or killed in employment under this title(~~(: PROVIDED, HOWEVER, That)~~), except as follows: (a) This section and RCW 51.16.040 shall not apply where the last exposure to the hazards of the disease or infection occurred prior to January 1, 1937; and (b) for claims filed on or after July 1, 1988, the rate of compensation for occupational diseases shall be established as of the date the disease requires medical treatment or becomes totally or partially disabling, whichever occurs first, and without regard to the date of the contraction of the disease or the date of filing the claim.

Sec. 6. Section 51.32.080, chapter 23, Laws of 1961 as last amended by section 2, chapter 58, Laws of 1986 and RCW 51.32.080 are each amended to read as follows:

(1) For the permanent partial disabilities here specifically described, the injured worker shall receive compensation as follows:

LOSS BY AMPUTATION

Of leg above the knee joint with short thigh stump (3" or less below the tuberosity of ischium)	\$54,000.00
Of leg at or above knee joint with functional stump	48,600.00
Of leg below knee joint	43,200.00
Of leg at ankle (Syme)	37,800.00
Of foot at mid-metatarsals	18,900.00
Of great toe with resection of metatarsal bone	11,340.00
Of great toe at metatarsophalangeal joint	6,804.00
Of great toe at interphalangeal joint	3,600.00
Of lesser toe (2nd to 5th) with resection of metatarsal bone	4,140.00
Of lesser toe at metatarsophalangeal joint	2,016.00
Of lesser toe at proximal interphalangeal joint	1,494.00
Of lesser toe at distal interphalangeal joint	378.00
Of arm at or above the deltoid insertion or by disarticulation at the shoulder	54,000.00
Of arm at any point from below the deltoid insertion to below the elbow joint at the insertion of the biceps tendon	51,300.00
Of arm at any point from below the elbow joint distal to the insertion of the biceps tendon to and including mid-metacarpal amputation of the hand	48,600.00
Of all fingers except the thumb at metacarpophalangeal joints	29,160.00
Of thumb at metacarpophalangeal joint or with resection of carpometacarpal bone	19,440.00
Of thumb at interphalangeal joint	9,720.00
Of index finger at metacarpophalangeal joint or with resection of metacarpal bone	12,150.00
Of index finger at proximal interphalangeal joint	9,720.00
Of index finger at distal interphalangeal joint	5,346.00
Of middle finger at metacarpophalangeal joint or with resection of metacarpal bone	9,720.00
Of middle finger at proximal interphalangeal joint	7,776.00
Of middle finger at distal interphalangeal joint	4,374.00
Of ring finger at metacarpophalangeal joint or with resection of metacarpal bone	4,860.00
Of ring finger at proximal interphalangeal joint	3,888.00

Of ring finger at distal interphalangeal joint	2,430.00
Of little finger at metacarpophalangeal joint or with resection of metacarpal bone	2,430.00
Of little finger at proximal interphalangeal joint	1,944.00
Of little finger at distal interphalangeal joint	972.00

MISCELLANEOUS

Loss of one eye by enucleation	21,600.00
Loss of central visual acuity in one eye	18,000.00
Complete loss of hearing in both ears	43,200.00
Complete loss of hearing in one ear	7,200.00

(2) Compensation for amputation of a member or part thereof at a site other than those above specified, and for loss of central visual acuity and loss of hearing other than complete, shall be in proportion to that which such other amputation or partial loss of visual acuity or hearing most closely resembles and approximates. Compensation for any other permanent partial disability not involving amputation shall be in the proportion which the extent of such other disability, called unspecified disability, shall bear to that above specified, which most closely resembles and approximates in degree of disability such other disability, compensation for any other unspecified permanent partial disability shall be in an amount as measured and compared to total bodily impairment: PROVIDED, That in order to reduce litigation and establish more certainty and uniformity in the rating of unspecified permanent partial disabilities, the department shall enact rules having the force of law classifying such disabilities in the proportion which the department shall determine such disabilities reasonably bear to total bodily impairment. In enacting such rules, the department shall give consideration to, but need not necessarily adopt, any nationally recognized medical standards or guides for determining various bodily impairments. For purposes of calculating monetary benefits, the amount payable for total bodily impairment shall be deemed to be ninety thousand dollars: PROVIDED, (~~That compensation for unspecified permanent partial disabilities involving injuries to the back that do not have marked objective clinical findings to substantiate the disability shall be determined at an amount equal to seventy-five percent of the monetary value of such disability as related to total bodily impairment. PROVIDED FURTHER;~~) That the total compensation for all unspecified permanent partial disabilities resulting from the same injury shall not exceed the sum of ninety thousand dollars(~~;~~ except that the total compensation for all unspecified permanent partial disabilities involving injuries to the back that do not have marked objective clinical findings to substantiate the disability and resulting from the same injury shall not exceed the sum of sixty-seven thousand five hundred dollars): PROVIDED FURTHER, That in case permanent partial disability

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

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

(4) When the compensation provided for in subsections (1) and (2) exceeds three times the average monthly wage in the state as computed under the provisions of RCW 51.08.018, payment shall be made in monthly payments in accordance with the schedule of temporary total disability payments set forth in RCW 51.32.090 until such compensation is paid to the injured worker in full, except that the first monthly payment shall be in an amount equal to three times the average monthly wage in the state as computed under the provisions of RCW 51.08.018, and interest shall be paid at the rate of eight percent on the unpaid balance of such compensation commencing with the second monthly payment: PROVIDED, That upon application of the injured worker or survivor the monthly payment may be converted, in whole or in part, into a lump sum payment, in which event the monthly payment shall cease in whole or in part. Such conversion may be made only upon written application of the injured worker or survivor to the department and shall rest in the discretion of the department depending upon the merits of each individual application: PROVIDED FURTHER, That upon death of a worker all unpaid installments accrued shall be paid according to the payment schedule established prior to the death of the worker to the widow or widower, or if there is no widow or widower surviving, to the dependent children of such claimant, and if there are no such dependent children, then to such other dependents as defined by this title.

Sec. 7. Section 2, chapter 286, Laws of 1975 1st ex. sess. as last amended by section 1, chapter 203, Laws of 1983 and RCW 51.32.075 are each amended to read as follows:

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

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

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

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

Sec. 8. Section 51.44.080, chapter 23, Laws of 1961 as last amended by section 29, chapter 43, Laws of 1972 ex. sess. and RCW 51.44.080 are each amended to read as follows:

The department shall notify the state treasurer from time to time, of such transfers as a whole from the state fund to the reserve fund and the interest or other earnings of the reserve fund shall become a part of the reserve fund itself. As soon as possible after June 30th of each year the state insurance commissioner shall expert the reserve fund to ascertain its standing as of June 30th of that year and the relation of its outstanding annuities at their then value (~~on the bases currently employed for new cases~~) to the cash on hand or at interest belonging to the fund. He shall promptly report the result of his examination to the department and to the state treasurer in writing not later than September 30th following. If the report shows that there was on said June 30th, in the reserve fund in cash or at interest, a

greater sum than the then annuity value of the outstanding pension obligations, the surplus shall be forthwith turned over to the state fund but, if the report shows the contrary condition of the reserve fund, the deficiency shall be forthwith made good out of the state fund.

Sec. 9. Section 10, chapter 14, Laws of 1980 as last amended by section 2, chapter 339, Laws of 1985 and RCW 51.32.095 are each amended to read as follows:

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

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

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

(3) Costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, transportation, child or

dependent care, and other necessary expenses for any such worker in an amount not to exceed three thousand dollars in any fifty-two week period, and the cost of continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation. Such expenses may include training fees for on-the-job training and the cost of furnishing tools and other equipment necessary for self-employment or reemployment: PROVIDED, That such compensation or payment of retraining with job placement expenses may not be authorized for a period of more than fifty-two weeks: PROVIDED FURTHER, That such period may, in the sole discretion of the supervisor after his or her review, be extended for an additional fifty-two weeks or portion thereof by written order of the supervisor.

In cases where the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging shall also be paid. Said costs shall be chargeable to the employer's cost experience or shall be paid by the self-insurer as the case may be.

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

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

(6) The benefits in this section shall be provided for the injured workers of self-insured employers. Self-insurers shall report both benefits provided and benefits denied under this section in the manner prescribed by the department by rule adopted under chapter 34.04 RCW. The director may, in his or her sole discretion and upon his or her own initiative or at any time that a dispute arises under this section, promptly make such inquiries as circumstances require and take such other action as he or she considers will properly determine the matter and protect the rights of the parties.

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

Sec. 10. Section 13, chapter 63, Laws of 1982 as amended by section 3, chapter 70, Laws of 1983 and RCW 51.32.250 are each amended to read as follows:

Modification of the injured worker's previous job or modification of a new job is recognized as a desirable method of returning the injured worker to ((suitable)) gainful employment. In order to assist employers in meeting the costs of job modification, and to encourage employers to modify jobs to accommodate retaining or hiring workers with disabilities resulting from work-related injury, the supervisor or the supervisor's designee, in his or her

discretion, may pay job modification costs in an amount not to exceed five thousand dollars per worker per job modification. This payment is intended to be a cooperative participation with the employer and funds shall be taken from the appropriate account within the second injury fund.

The benefits provided for in this section are available to any otherwise eligible worker regardless of the date of industrial injury.

Sec. 11. Section 51.32.160, chapter 23, Laws of 1961 as last amended by section 4, chapter 59, Laws of 1986 and RCW 51.32.160 are each amended to read as follows:

If aggravation, diminution, or termination of disability takes place (~~or be discovered after the rate of compensation shall have been established or compensation terminated, in any case~~), the director (~~(; through and by means of the division of industrial insurance;)~~) may, upon the application of the beneficiary, made within seven years (~~(after the establishment or termination of such compensation)~~) from the date the first closing order becomes final, or at any time upon his or her own motion, readjust ((for further application)) the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment: PROVIDED, That the director may, upon application of the worker made at any time, provide proper and necessary medical and surgical services as authorized under RCW 51.36.010. "Closing order" as used in this section means an order based on factors which include medical recommendation, advice, or examination. Applications for benefits where the claim has been closed without medical recommendation, advice, or examination are not subject to the seven year limitation of this section. The preceding sentence shall not apply to any closing order issued prior to July 1, 1981. First closing orders issued between July 1, 1981, and July 1, 1985, shall, for the purposes of this section only, be deemed issued on July 1, 1985. The time limitation of this section shall be ten years in claims involving loss of vision or function of the eyes. If an order denying an application to reopen filed on or after July 1, 1988, is not issued within ninety days of receipt of such application by the self-insured employer or the department, such application shall be deemed granted. However, for good cause, the department may extend the time for making the final determination on the application for an additional sixty days.

If a worker receiving a pension for total disability returns to gainful employment for wages, the director may suspend or terminate the rate of compensation established for the disability without producing medical evidence that shows that a diminution of the disability has occurred.

No act done or ordered to be done by the director, or the department prior to the signing and filing in the matter of a written order for such readjustment shall be ground for such readjustment.

Sec. 12. Section 5, chapter 14, Laws of 1980 and RCW 51.08.178 are each amended to read as follows:

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

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

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

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

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

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

Sec. 13. Section 46, chapter 289, Laws of 1971 ex. sess. as last amended by section 1, chapter 55, Laws of 1986 and RCW 51.32.055 are each amended to read as follows:

(1) One purpose of this title is to restore the injured worker as near as possible to the condition of self-support as an able-bodied worker. Benefits for permanent disability shall be determined under the director's supervision only after the injured worker's condition becomes fixed.

(2) All determinations of permanent disabilities shall be made by the department. Either the worker, employer, or self-insurer may make a request or such inquiry may be initiated by the director on his or her own motion. Such determinations shall be required in every instance where permanent disability is likely to be present. All medical reports and other pertinent information in the possession of or under the control of the employer or self-insurer shall be forwarded to the director with such requests.

(3) A request for determination of permanent disability shall be examined by the department and an order shall issue in accordance with RCW 51.52.050.

(4) The department may require that the worker present himself or herself for a special medical examination by a physician, or physicians, selected by the department, and the department may require that the worker present himself or herself for a personal interview. In such event the costs of such examination or interview, including payment of any reasonable travel expenses, shall be paid by the department or self-insurer as the case may be.

(5) The director may establish a medical bureau within the department to perform medical examinations under this section. Physicians hired or retained for this purpose shall be grounded in industrial medicine and in the assessment of industrial physical impairment. Self-insurers shall bear a proportionate share of the cost of such medical bureau in a manner to be determined by the department.

(6) Where dispute arises from the handling of any claims prior to the condition of the injured worker becoming fixed, the worker, employer, or self-insurer may request the department to resolve the dispute or the director may initiate an inquiry on his or her own motion. In such cases the department shall proceed as provided in this section and an order shall issue in accordance with RCW 51.52.050.

(7) (a) In the case of claims accepted by self-insurers after June 30, 1986, and before July 1, ~~(+1988)~~ 1990, which involve only medical treatment and/or the payment of temporary disability compensation under RCW 51.32.090 and which at the time medical treatment is concluded do not involve permanent disability, if the claim is one with respect to which the department has not intervened under subsection (6) of this section, and the injured worker has returned to work with the self-insured employer of record, such claims may be closed by the self-insurer, subject to reporting

of claims to the department in a manner prescribed by department rules adopted under chapter 34.04 RCW.

(b) All determinations of permanent disability for claims accepted by self-insurers after June 30, 1986, and before July 1, (~~(1988)~~) 1990, shall be made by the self-insured section of the department under subsections (1) through (4) of this section.

(c) Upon closure of claims under (a) of this subsection the self-insurer shall enter a written order, communicated to the worker and the department self-insurance section, which contains the following statement clearly set forth in bold face type: "This order constitutes notification that your claim is being closed with medical benefits and temporary disability compensation only as provided, and with the condition you have returned to work with the self-insured employer. If for any reason you disagree with the conditions or duration of your return to work or the medical benefits or the temporary disability compensation that has been provided, you may protest in writing to the department of labor and industries, self-insurance section, within sixty days of the date you received this order." In the event the department receives such a protest the self-insurer's closure order shall be held in abeyance. The department shall review the claim closure action and enter a determinative order as provided for in RCW 51.52.050.

(d) If within two years of claim closure the department determines that the self-insurer has made payment of benefits because of clerical error, mistake of identity, or innocent misrepresentation, or the department discovers a violation of the conditions of claim closure, the department may require the self-insurer to correct the benefits paid or payable. This paragraph shall not limit in any way the application of RCW 51.32.240.

(8) In the case of claims accepted by self-insurers after June 30, (~~(1988)~~) 1990, which involve only medical treatment and which do not involve payment of temporary disability compensation under RCW 51.32.090 and which at the time medical treatment is concluded do not involve permanent disability, such claims may be closed by the self-insurers subject to reporting of claims to the department in a manner prescribed by department rules promulgated pursuant to chapter 34.04 RCW. Upon such closure the self-insurers shall enter a written order, communicated to the worker, which contains the following statement clearly set forth in bold-face type: "This order constitutes notification that your claim is being closed with medical benefits only, as provided. If for any reason you disagree with this closure, you may protest in writing to the Department of Labor and Industries, Olympia, within 60 days of the date you received this order. The department will then review your claim and enter a further determinative order." In the event the department receives such a protest it shall review the claim and enter a further determinative order as provided for in RCW 51.52.050.

Sec. 14. Section 2, chapter 55, Laws of 1986 (uncodified) is amended to read as follows:

The department of labor and industries shall conduct a study of the program established by section 1 of this act. The study shall be funded by a special assessment on all self-insured employers. The study and the special assessment shall be conducted under department rules adopted pursuant to chapter 34.04 RCW. The department shall make periodic reports on the study to the joint select committee on industrial insurance, or to the commerce and labor committees of the senate and house of representatives, or the appropriate successor committees, and to the workers' compensation advisory committee. The initial report shall be made by January 1, 1987, with quarterly reports made thereafter. A final report shall be made to the legislature at the commencement of the 1988 regular legislative session.

This section shall expire on July 1, (~~(+1988)~~) 1990.

NEW SECTION. Sec. 15. A new section is added to chapter 51.32 RCW to read as follows:

The increases in benefits in RCW 51.32.050, 51.32.060, 51.32.090, and 51.32.180, contained in chapter . . . (EHB 1396), Laws of 1988 do not affect a retrospective rating agreement entered into by any employer with the department before July 1, 1988.

NEW SECTION. Sec. 16. The department shall adopt a rule pursuant to chapter 34.04 RCW that claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of occupational disease in RCW 51.08.140.

NEW SECTION. Sec. 17. Section 4 of this act shall take effect on June 30, 1989. Sections 1, 2, 3, and 6 of this act shall take effect on July 1, 1988.

Passed the House March 7, 1988.

Passed the Senate March 6, 1988.

Approved by the Governor March 21, 1988.

Filed in Office of Secretary of State March 21, 1988.

CHAPTER 162

[Engrossed Substitute House Bill No. 1511]

WATER DISTRICTS AND SEWER DISTRICTS—POWERS AND DUTIES REVISED

AN ACT Relating to water districts and sewer districts; amending RCW 56.08.090, 57.08.016, 56.16.135, 57.20.135, 56.02.060, 56.02.070, 57.02.040, 56.24.070, and 57.24.010; adding a new section to chapter 56.02 RCW; adding a new section to chapter 57.06 RCW; adding a new section to chapter 56.36 RCW; adding a new section to chapter 57.40 RCW; creating a new section; and declaring an emergency.

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

Sec. 1. Section 2, chapter 51, Laws of 1953 as amended by section 2, chapter 103, Laws of 1984 and RCW 56.08.090 are each amended to read as follows: