

sum of two thousand six hundred dollars, or so much thereof as may be necessary, to carry out the purposes of this act.

Passed the House January 21, 1982.

Passed the Senate March 7, 1982.

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CHAPTER 63

[House Bill No. 454]

VOCATIONAL REHABILITATION—INDUSTRIAL INSURANCE— APPROPRIATIONS

AN ACT Relating to industrial insurance; amending section 51.12.020, chapter 23, Laws of 1961 as last amended by section 3, chapter 128, Laws of 1981 and RCW 51.12.020; amending section 51.12.090, chapter 23, Laws of 1961 as last amended by section 20, chapter 350, Laws of 1977 ex. sess. and RCW 51.12.090; amending section 6, chapter 14, Laws of 1980 and RCW 51.12.110; amending section 51.32.050, chapter 23, Laws of 1961 as last amended by section 42, chapter 350, Laws of 1977 ex. sess. and RCW 51.32.050; amending section 10, chapter 14, Laws of 1980 and RCW 51.32.095; amending section 3, chapter 286, Laws of 1975 1st ex. sess. as last amended by section 1, chapter 231, Laws of 1979 ex. sess. and RCW 51.32.220; amending section 51.36.020, chapter 23, Laws of 1961 as last amended by section 57, chapter 350, Laws of 1977 ex. sess. and RCW 51.36.020; amending section 51.44.040, chapter 23, Laws of 1961 as last amended by section 21, chapter 323, Laws of 1977 ex. sess. and RCW 51.44.040; amending section 51.48.010, chapter 23, Laws of 1961 as last amended by section 69, chapter 350, Laws of 1977 ex. sess. and RCW 51.48.010; amending section 51.48.030, chapter 23, Laws of 1961 as amended by section 64, chapter 289, Laws of 1971 ex. sess. and RCW 51.48.030; amending section 51.52.120, chapter 23, Laws of 1961 as last amended by section 81, chapter 350, Laws of 1977 ex. sess. and RCW 51.52.120; amending section 51.52.130, chapter 23, Laws of 1961 as amended by section 82, chapter 350, Laws of 1977 ex. sess. and RCW 51.52.130; adding a new section to chapter 51.32 RCW; adding a new chapter to Title 51 RCW; making appropriations; providing an effective date; and declaring an emergency.

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

NEW SECTION. Section 1. The purpose of rehabilitation in workers' compensation is to return the injured worker to suitable gainful employment as soon as possible. The policy of the state is to provide early notification and referral of qualified injured workers to vocational rehabilitation services, development of comprehensive rehabilitation plans, and independent review and evaluation of service delivery. This policy shall be implemented with the express intent of assisting the qualified injured worker while avoiding expensive litigation and unnecessary time lost from work.

NEW SECTION. Sec. 2. For purposes of this chapter, a "qualified injured worker" means an employee who because of the effects of work-related injury or disease, whether or not combined with the effects of a prior industrial injury or disability:

(1) Is permanently precluded or likely to be precluded from engaging in the usual occupation or position in which the worker was engaged at the time of injury; and

(2) Can reasonably be expected to benefit from rehabilitation services which would significantly reduce or eliminate the decrease in the worker's employability.

NEW SECTION. Sec. 3. There is created an office of rehabilitation review within the industrial insurance division of the department of labor and industries. The office shall:

(1) Establish specific definitions, eligibility criteria, and timetables and procedures for the provision of vocational rehabilitation services;

(2) Mediate disputes;

(3) Review and approve or disapprove vocational rehabilitation plans; and

(4) Establish procedures for registration of rehabilitation counselors employed by the state, public, or private agencies and establish criteria and procedures for removal of registered rehabilitation counselors from the list for failure to comply with this chapter or the rules and regulations established by the department.

NEW SECTION. Sec. 4. The department of labor and industries shall have the authority to make, amend, and rescind in the manner prescribed by chapter 34.04 RCW such rules as may be necessary to carry out this chapter.

NEW SECTION. Sec. 5. (1) The vocational rehabilitation plan may include modification of the worker's occupation at the time of injury, provisions for alternative work with the same employer, modification of the worker's previous employment with a new employer, direct job placement assistance, on-the-job training, or short-term retraining subject to limitation by RCW 51.32.095. The plan shall define the responsibilities of the worker, employer, and other parties in implementing the plan.

(2) The following order of priorities is preferred in determining suitable gainful employment and developing vocational rehabilitation plans:

(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 the previous job with a new employer;

(e) A new job with a new employer or self-employment based upon transferable skills;

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

(g) Short-term retraining and job placement.

Prior to any modification of the order of these priorities, the plan shall first be submitted in writing to the office of rehabilitation review for authorization. In the cases involving return to the previous job with the same

employer, modification of the previous job with the same employer, or a new job with the same employer, self-insurers shall submit a written, summary report to the office of vocational rehabilitation review but shall not be required to submit a complete, documented vocational rehabilitation plan.

NEW SECTION. Sec. 6. (1) If a determination of ineligibility is unacceptable to a worker or employer, or if a vocational rehabilitation plan is unacceptable to a worker or employer, the worker or employer may petition the supervisor of industrial insurance to review the decision. The supervisor, or the supervisor's designee, shall render a final decision within thirty days of receipt of the petition for review.

(2) The worker or employer may appeal a final decision of the supervisor, or the supervisor's designee, to the board of industrial insurance appeals for an expedited appeal which shall be heard as provided in this section. Board review of such decisions shall be limited to matters of law. A final decision rendered within thirty days of the closing of the hearing proceeding, and the procedures relating to recommended decisions and orders, and petitions for review of same, as contained in RCW 51.52.104 and 51.52.106, shall not be applicable to appeals filed under this section. Further appeals taken from the final decision of the board shall be governed by the provisions relating to judicial review of administrative decisions contained in RCW 34.04.130 and 34.04.140 as now existing or hereafter amended. The department shall have the same right of review of the board's decision as does any other aggrieved party.

(3) For purposes of this section, "expedited appeal" means an appeal filed with the board within fifteen working days after receipt of notice of the decision from the office of rehabilitation review. An expedited appeal shall be heard within thirty calendar days following receipt of (a) the notice of appeal from an aggrieved party, or (b) a legible copy of the records of the office of rehabilitation review, whichever is later. The hearing held under this section shall be recorded and shall be confined to review of the records of the office of rehabilitation review. However, in cases of alleged irregularities in procedure not revealed by the records, testimony concerning such irregularities may be received by the board. The board shall in addition have authority, upon request by the worker or the employer, to hear oral argument and receive written information concerning the matter in dispute.

(4) The board of industrial insurance appeals shall have the authority to make, amend, and rescind in a manner prescribed by chapter 34.04 RCW such rules as may be necessary to carry out this section.

NEW SECTION. Sec. 7. On or before January 1st of each year, the office of financial management shall submit to the legislature a rehabilitation performance audit of the activities of the office of rehabilitation review, the industrial insurance division, self-insurers, and private rehabilitation agencies. The performance audit shall include a statistical summary of all rehabilitation cases, a cost-benefit analysis of vocational rehabilitation

plans, return-to-work data, and a comparison of public and private vocational rehabilitation services. The office of financial management may contract with a private firm to conduct the performance audit.

NEW SECTION. Sec. 8. Qualified injured workers shall participate in the approved vocational rehabilitation plan. For each week that a qualified injured worker does not participate without a showing of good cause, benefits shall be reduced by one-half on the order of the supervisor. Implementation of the plan shall begin as soon as the qualified injured worker is capable of participation.

NEW SECTION. Sec. 9. A qualified injured worker shall be entitled to continuation of temporary total disability benefits as defined in RCW 51.32.090:

- (1) During rehabilitation; and
- (2) During the pendency of any petition for review to the supervisor or appeal to the board of industrial insurance appeals.

NEW SECTION. Sec. 10. Except as otherwise expressly provided in this chapter, nothing in this chapter may be construed to annul or modify any lawful employment agreement entered into before the effective date of this act between an employer and an organization of workers. If a conflict exists between an employment agreement and any resolution, rule, policy, or regulation adopted under this chapter, the terms of the employment agreement shall prevail only if the employment agreement was entered into before the effective date of this act.

Sec. 11. Section 10, chapter 14, Laws of 1980 and RCW 51.32.095 are each amended to read as follows:

One of the primary purposes of this title is the restoration of the injured worker to gainful employment. To this end, the department 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 ((or)), retraining, and job placement as may be reasonable to qualify the worker for employment 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 or retraining with job placement is both necessary and likely to restore the injured worker to a form of gainful employment, including self-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 of books, tuition, fees, supplies, equipment, ((and)) transportation, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed

~~((one))~~ three thousand ~~((five hundred))~~ dollars in any ~~((calendar year))~~ fifty-two week period, and continue the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation or retraining with job placement. 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 ~~((such vocational rehabilitation or))~~ 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.

Sec. 12. Section 51.36.020, chapter 23, Laws of 1961 as last amended by section 57, chapter 350, Laws of 1977 ex. sess. and RCW 51.36.020 are each amended to read as follows:

(1) When the injury to any worker is so serious as to require his or her being taken from the place of injury to a place of treatment, his or her employer shall, at the expense of the medical aid fund, or self-insurer, as the case may be, furnish transportation to the nearest place of proper treatment.

(2) Every worker whose injury results in the loss of one or more limbs or eyes shall be provided with proper artificial substitutes and every worker, who suffers an injury to an eye producing an error of refraction, shall be once provided proper and properly equipped lenses to correct such error of refraction and his or her disability rating shall be based upon the loss of sight before correction.

(3) Every worker(;) whose accident results in damage to or destruction of an artificial limb, eye, or tooth, shall have same repaired or replaced.

(4) Every worker whose hearing aid or eyeglasses or lenses are damaged, destroyed, or lost as a result of an industrial accident shall have the same restored or replaced. The department or self-insurer shall be liable only for the cost of restoring damaged hearing aids or eyeglasses to their condition at the time of the accident.

(5) All mechanical appliances necessary in the treatment of an injured worker, such as braces, belts, casts, and crutches, shall be provided and all mechanical appliances required as permanent equipment after treatment has been completed shall continue to be provided or replaced without regard to the date of injury or date treatment was completed, notwithstanding any other provision of law.

(6) A worker, whose injury is of such short duration as to bring him or her within the time limit provisions of RCW 51.32.090, shall nevertheless

receive during the omitted period medical, surgical, and hospital care and service and transportation under the provisions of this chapter.

(7) Whenever in the sole discretion of the supervisor it is reasonable and necessary to provide residence modifications necessary to meet the needs and requirements of the worker who has sustained catastrophic injury, the department or self-insurer may be ordered to pay an amount not to exceed the state's average annual wage for one year as determined under RCW 50.04.355, as now existing or hereafter amended, toward the cost of such modifications or construction. Such payment shall only be made for the construction or modification of a residence in which the injured worker resides. Only one residence of any worker may be modified or constructed under this subsection, although the supervisor may order more than one payment for any one home, up to the maximum amount permitted by this section.

(8) Whenever in the sole discretion of the supervisor it is reasonable and necessary to modify a motor vehicle owned by a worker who has become an amputee or becomes paralyzed because of an industrial injury, the supervisor may order up to fifty percent of the state's average annual wage for one year, as determined under RCW 50.04.355, as now existing or hereafter amended, to be paid by the department or self-insurer toward the costs thereof.

(9) The benefits provided by subsections (7) and (8) of this section are available to any otherwise eligible worker regardless of the date of industrial injury.

NEW SECTION. Sec. 13. There is added to chapter 51.32 RCW a new section to read as follows:

Modification of the injured worker's previous 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 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.

Sec. 14. Section 51.44.040, chapter 23, Laws of 1961 as last amended by section 21, chapter 323, Laws of 1977 ex. sess. and RCW 51.44.040 are each amended to read as follows:

(1) There shall be in the office of the state treasurer, a fund to be known and designated as the "second injury fund", which shall be used only for the purpose of defraying charges against it as provided in RCW 51.16.120 and section 13 of this 1982 act, as now or hereafter amended. Said fund shall be administered by the director. The state treasurer shall be the custodian of

the second injury fund and shall be authorized to disburse moneys from it only upon written order of the director.

(2) Payments to the second injury fund from the accident fund shall be made pursuant to rules and regulations promulgated by the director.

(3) Assessments for the second injury fund shall be imposed on self-insurers pursuant to rules and regulations promulgated by the director to ensure that self-insurers shall pay to such fund in the proportion that the payments made from such fund on account of claims made against self-insurers bears to the total sum of payments from such fund.

Sec. 15. Section 51.12.020, chapter 23, Laws of 1961 as last amended by section 3, chapter 128, Laws of 1981 and RCW 51.12.020 are each amended to read as follows:

The following are the only employments which shall not be included within the mandatory coverage of this title:

(1) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment.

(2) Any person employed to do gardening, maintenance, repair, remodeling, or similar work in or about the private home of the employer (~~which does not exceed ten consecutive work days~~).

(3) A person whose (~~work is casual and the~~) employment is not in the course of the trade, business, or profession of his or her employer and is not in or about the private home of the employer.

(4) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

(5) Sole proprietors or partners: PROVIDED, That after July 26, 1981, sole proprietors or partners who for the first time register under chapter 18.27 RCW or become licensed for the first time under chapter 19.28 RCW shall be included under the mandatory coverage provisions of this title subject to the provisions of RCW 51.32.030. These persons may elect to withdraw from coverage under RCW 51.12.115.

(6) Any employee, not regularly and continuously employed by the employer in agricultural labor, whose cash remuneration paid by or due from any one employer in that calendar year for agricultural labor is less than one hundred fifty dollars. Employees not regularly and continuously employed in agricultural labor by any one employer but who are employed in agricultural labor on a seasonal basis shall come under the coverage of this title only when their cash remuneration paid or due in that calendar year exceeds one hundred fifty dollars but only as of the occurrence of that event and only as to their work for that employer.

(7) Any child under eighteen years of age employed by his parent or parents in agricultural activities on the family farm.

(8) Jockeys while participating in or preparing horses for race meets licensed by the Washington horse racing commission pursuant to chapter 67-.16 RCW.

(9) Any executive officer elected and empowered in accordance with the articles of incorporation or bylaws of a corporation who at all times during the period involved is also a director and shareholder of the corporation. Any officer who was considered by the department to be covered on and after June 30, 1977, shall continue to be covered until such time as the officer voluntarily elects to withdraw from coverage in the manner provided by RCW 51.12.110. However, any corporation may elect to cover such officers who are in fact employees of the corporation in the manner provided by RCW 51.12.110.

Sec. 16. Section 51.12.090, chapter 23, Laws of 1961 as last amended by section 20, chapter 350, Laws of 1977 ex. sess. and RCW 51.12.090 are each amended to read as follows:

(1) The provisions of this title shall apply to employers and workers (other than railways and their workers) engaged in intrastate and also in interstate or foreign commerce, for whom a rule of liability or method of compensation now exists under or may hereafter be established by the congress of the United States, only to the extent that the payroll of such workers may and shall be clearly separable and distinguishable from the payroll of workers engaged in interstate or foreign commerce: PROVIDED, That, except as provided under subsection (2) of this section, as to workers whose payroll is not so clearly separable and distinguishable the employer shall in all cases be liable in damages for injuries to the same extent and under the same circumstances as is specified in the case of railroads in the first proviso of RCW 51.12.080: PROVIDED FURTHER, That nothing in this title shall be construed to exclude goods or materials and/or workers brought into this state for the purpose of engaging in work.

(2) Common carrier employers engaged in intrastate commerce and also interstate or foreign commerce may exempt themselves from being liable for damages under this title as provided under subsection (1) of this section so long as at the time of such injury:

(a) The employer is domiciled in this state;

(b) The injured person is a worker as defined under this title;

(c) The employer has secured payment of compensation; and

(d) The employer has made election to cover all such persons in the manner provided by RCW 51.12.110.

Sec. 17. Section 6, chapter 14, Laws of 1980 and RCW 51.12.110 are each amended to read as follows:

Any employer who has in his or her employment any ((exempt)) person or persons excluded from mandatory coverage pursuant to RCW 51.12.020 (1), (2), (3), (4), (6), (7), (8), or (9) may file notice in writing with the director, on such forms as the department may provide, of his or her election

to ~~((be))~~ make such persons otherwise excluded subject to this title~~((and))~~. The employer shall forthwith display in a conspicuous manner about his or her works, and in a sufficient number of places to reasonably inform his or her workers of the fact, printed notices furnished by the department stating that he or she has so elected. Said election shall become effective upon the filing of said notice in writing. ((Any worker in the employ of such applicant shall be entitled at any time within five days after the posting of said notice by his or her employer, or within five days after he or she has been employed by an employer who has elected to become subject to this title as herein provided, to give a written notice to such employer and to the department of his or her election not to become subject to this title.)) The employer and ~~((such of))~~ his or her workers ~~((as shall not have given such written notice of their election to the contrary))~~ shall be subject to all the provisions of this title and entitled to all of the benefits thereof: PROVIDED, That those who have heretofore complied with the foregoing conditions and are carried and considered by the department as within the purview of this title shall be deemed and considered as having fully complied with its terms and shall be continued by the department as entitled to all of the benefits and subject to all of the liabilities without other or further action. Any employer who has complied with this section may withdraw his or her acceptance of liability under this title by filing written notice with the director of the withdrawal of his or her acceptance. Such withdrawal shall become effective thirty days after the filing of such notice or on the date of the termination of the security for payment of compensation, whichever last occurs. The employer shall, at least thirty days before the effective date of the withdrawal, post reasonable notice of such withdrawal where the affected worker or workers work and shall otherwise notify personally the affected workers. Withdrawal of acceptance of this title shall not affect the liability of the department or self-insurer for compensation for any injury occurring during the period of acceptance.

The department shall have the power to cancel the elective adoption coverage if any required payments or reports have not been made. Cancellation by the department shall be no later than thirty days from the date of notice in writing by the department advising of cancellation being made.

Sec. 18. Section 51.32.050, chapter 23, Laws of 1961 as last amended by section 42, chapter 350, Laws of 1977 ex. sess. 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 ~~((one))~~ 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 ~~((the following sums: (a)))~~ 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(~~(-b))~~);

(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(~~(-c))~~);

(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(~~(-d))~~);

(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(~~(-e))~~);

(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(~~(-f))~~); 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. (~~(-g))~~)

(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 (~~wages of the deceased worker~~) 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 monthly payment made to the child or children of the deceased worker shall from the month following such remarriage be 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.

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

(e) In addition to the monthly payments (~~(above)~~) 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 (~~(eight)~~) 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(~~(, and)~~). 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) (~~(He or she shall receive)~~) 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 (~~(subsection (2)(i))~~) (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 (~~(exercising the option granted in subsection (2)(i))~~) claiming the lump sum payment authorized in (2)(f)(i) of this section during the life of the remarriage (~~(and)~~), 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 (~~(provided in this section: PROVIDED, HOWEVER, That)~~).

(g) If the surviving spouse during the remarriage should die without having previously received the lump sum payment provided (~~(herein)~~) 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(~~(: PROVIDED FURTHER, That 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 this 1976 amendatory act the amount of such increase in pension reserve in any such case shall be transferred to the reserve fund from the supplemental pension fund)~~).

(h) The effective date of (~~(an award)~~) 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 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 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) 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.

Sec. 19. Section 3, chapter 286, Laws of 1975 1st ex. sess. as last amended by section 1, chapter 231, Laws of 1979 ex. sess. and RCW 51.32.220 are each amended to read as follows:

(1) For persons under the age of (~~sixty-two~~) sixty-five receiving compensation for temporary or permanent total disability pursuant to the provisions of chapter 51.32 RCW, such compensation shall be reduced by an amount equal to the benefits payable under the federal old-age, survivors and disability insurance act as now or hereafter amended not to exceed the amount of the reduction established pursuant to 42 USC 424a. However, such reduction shall not apply when the combined compensation provided pursuant to chapter 51.32 RCW and the federal old-age, survivors and disability insurance act is less than the total benefits to which the federal reduction would apply, pursuant to 42 USC 424a. Where any person described in this section refuses to authorize the release of information concerning the amount of benefits payable under said federal act the department's estimate of said amount shall be deemed to be correct unless and until the actual amount is established and no adjustment shall be made for any period of time covered by any such refusal.

(2) Any reduction under subsection (1) of this section shall be effective the month following the month in which the department or self-insurer is notified by the federal social security administration that the person is receiving disability benefits under the federal old-age, survivors and disability insurance act: PROVIDED, That in the event of an overpayment of benefits the department or self-insurer may not recover more than the overpayments for the six months immediately preceding the date the department or self-insurer notifies the worker that an overpayment has occurred: PROVIDED FURTHER, That upon determining that there has been an overpayment, the department or self-insurer shall immediately notify the person who received the overpayment that he or she shall be required to make repayment pursuant to this section and RCW 51.32.230.

(3) Recovery of any overpayment must be taken from future temporary or permanent total disability benefits or permanent partial disability benefits provided by this title. In the case of temporary or permanent total disability benefits, the recovery shall not exceed twenty-five percent of the monthly amount due from the department or self-insurer or one-sixth of the total overpayment, whichever is the lesser.

(4) No reduction may be made unless the worker receives notice of the reduction prior to the month in which the reduction is made.

(5) In no event shall the reduction reduce total benefits to less than the greater amount the worker may be entitled to under this title or the federal old-age, survivors and disability insurance act.

(6) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.04 RCW, may exercise his discretion to waive, in whole or in part, the amount of any

overpayment where the recovery would be against equity and good conscience.

(7) The amendment in subsection (1) of this section by this 1982 act raising the age limit during which the reduction shall be made from age sixty-two to age sixty-five shall apply with respect to workers whose effective entitlement to total disability compensation begins after the effective date of this 1982 act.

Sec. 20. Section 51.48.010, chapter 23, Laws of 1961 as last amended by section 69, chapter 350, Laws of 1977 ex. sess. and RCW 51.48.010 are each amended to read as follows:

Every employer shall be liable for the penalties described in this title and ~~((shall))~~ may also be liable if an injury or occupational disease has been sustained by a worker prior to the time he or she has secured the payment of such compensation to a penalty in a sum ~~((equal to))~~ not less than fifty percent nor more than one hundred percent of the cost for such injury or occupational disease~~(;)~~. Any employer who has failed to secure payment of compensation for his or her workers covered under this title may also be liable to a maximum penalty in a sum of two hundred dollars or in a sum double the amount of premiums incurred prior to securing payment of compensation under this title, whichever is greater, for the benefit of the medical aid fund.

Sec. 21. Section 51.48.030, chapter 23, Laws of 1961 as amended by section 64, chapter 289, Laws of 1971 ex. sess. and RCW 51.48.030 are each amended to read as follows:

Every employer who fails to keep the records required by this title or fails to make the reports provided in this title shall be subject to a penalty of not to exceed ~~((one hundred dollars))~~ two hundred percent of the quarterly premium for each such offense.

Sec. 22. Section 51.52.120, chapter 23, Laws of 1961 as last amended by section 81, chapter 350, Laws of 1977 ex. sess. and RCW 51.52.120 are each amended to read as follows:

(1) It shall be unlawful for an attorney engaged in the representation of any worker or beneficiary to charge for services in the department any fee in excess of a reasonable fee, of not more than thirty percent of the increase in the award secured by the attorney's services. Such reasonable fee shall be fixed by the director for services performed by an attorney for such worker or beneficiary, prior to the notice of appeal to the board if written application therefor is made by the attorney, worker, or beneficiary.

(2) If, on appeal to the board, the order, decision, or award of the department is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief

is sustained by the board, the board shall fix a reasonable fee for the services of his or her attorney in proceedings before the board if written application therefor is made by the attorney, worker, or beneficiary. In fixing the amount of such attorney's fee, the board shall take into consideration the fee allowed, if any, by the director, for services before the department, and the board may review the fee fixed by said director. Any attorney's fee set by the department or the board may be reviewed by the superior court upon application of such attorney, worker, or beneficiary. The department or self-insured employer, as the case may be, shall be served a copy of the application and shall be entitled to appear and take part in the proceedings. Where the board, pursuant to this section, fixes the attorney's fee, it shall be unlawful for an attorney to charge or receive any fee for services before the board in excess of that fee fixed by the board. Any person who violates any provision of this section shall be guilty of a misdemeanor.

Sec. 23. Section 51.52.130, chapter 23, Laws of 1961 as amended by section 82, chapter 350, Laws of 1977 ex. sess. and RCW 51.52.130 are each amended to read as follows:

If, on appeal to the court from the decision and order of the board, said decision and order is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained by the court, a reasonable fee for the services of the worker's or beneficiary's attorney shall be fixed by the court. In fixing the fee the court shall take into consideration the fee or fees, if any, fixed by the director and the board for such attorney's services before the department and the board. If the court finds that the fee fixed by the director or by the board is inadequate for services performed before the department or board, or if the director or the board has fixed no fee for such services, then the court shall fix a fee for the attorney's services before the department, or the board, as the case may be, in addition to the fee fixed for the services in the court. If the decision and order of the board is reversed or modified and if the accident fund is affected by the litigation then the attorney's fee fixed by the court for services before the court only, and the fees of medical and other witnesses and the costs shall be payable out of the administrative fund of the department. In the case of self-insured employers, if the decision and order of the board is reversed or modified resulting in additional benefits by the litigation that would be paid from the accident fund if the employer were not self-insured, then the attorney fees fixed by the court for services before the court, only, and the fees of medical and other witnesses and the costs shall be payable directly by the self-insured employer.

NEW SECTION. Sec. 24. Sections 1 through 10 of this act constitute a new chapter in Title 51 RCW.

NEW SECTION. Sec. 25. There is appropriated from the medical aid fund to the department of labor and industries for the biennium ending June 30, 1983, the sum of one million dollars, or so much thereof as may be necessary, for the establishment, maintenance, and operation of the office of rehabilitation review established under this act.

There is also appropriated from the medical aid fund to the office of financial management for the biennium ending June 30, 1983, the sum of fifty thousand dollars, or so much thereof as may be necessary for the performance audit to be conducted under section 7 of this act.

There is also appropriated from the medical aid fund to the board of industrial insurance appeals for the biennium ending June 30, 1983, the sum of one hundred forty-five thousand six hundred eighty-five dollars, or so much thereof as may be necessary, for the processing and completion of expedited appeals conducted under this act.

NEW SECTION. Sec. 26. Section 4 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately. All other sections of this act shall take effect on January 1, 1983. The director of the department of labor and industries is authorized to immediately take such steps as are necessary to insure that this act is implemented on its effective dates.

Passed the House March 4, 1982.

Passed the Senate March 1, 1982.

Approved by the Governor March 26, 1982.

Filed in Office of Secretary of State March 26, 1982.

CHAPTER 64

[Substitute House Bill No. 476]

LIBRARY RECORDS—PUBLIC DISCLOSURE EXEMPTION

AN ACT Relating to public records; and amending section 31, chapter 1, Laws of 1973 as last amended by section 13, chapter 314, Laws of 1977 ex. sess. and RCW 42.17.310.

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

Section 1. Section 31, chapter 1, Laws of 1973 as last amended by section 13, chapter 314, Laws of 1977 ex. sess. and RCW 42.17.310 are each amended to read as follows:

(1) The following shall be exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, welfare recipients, prisoners, probationers, or parolees.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.