

- (a) Governing the formation of the self-insurers' insolvency trust for the purpose of this chapter;
- (b) Governing the organization and operation of the self-insurers' insolvency trust to assure compliance with the requirements of this chapter;
- (c) Requiring adequate accountability of the collection and disbursement of funds in the self-insurers' insolvency trust; and
- (d) Any other provisions necessary to carry out the requirements of this chapter.

Sec. 7. Section 32, chapter 289, Laws of 1971 ex. sess. and RCW 51.14.080 are each amended to read as follows:

Certification of a self-insurer shall be withdrawn by the director upon one or more of the following grounds:

- (1) The employer no longer meets the requirements of a self-insurer;
- or
- (2) The self-insurer's deposit is insufficient; or
 - (3) The self-insurer intentionally or repeatedly induces employees to fail to report injuries, induces claimants to treat injuries in the course of employment as off-the-job injuries, persuades claimants to accept less than the compensation due, or unreasonably makes it necessary for claimants to resort to proceedings against the employer to obtain compensation; or
 - (4) The self-insurer habitually fails to comply with rules and regulations of the director regarding reports or other requirements necessary to carry out the purposes of this title; or
 - (5) The self-insurer habitually engages in a practice of arbitrarily or unreasonably refusing employment to applicants for employment or discharging employees because of nondisabling bodily conditions; or
 - (6) The self-insurer fails to pay an insolvency assessment under the procedures established pursuant to section 6 of this 1986 act.

Passed the House February 12, 1986.

Passed the Senate March 3, 1986.

Approved by the Governor March 12, 1986.

Filed in Office of Secretary of State March 12, 1986.

CHAPTER 58

[Substitute House Bill No. 1873]

INDUSTRIAL INSURANCE BENEFITS—INJURED WORKERS—OPTIONS— IMMUNOLOGICAL TREATMENT

AN ACT Relating to benefits for injured workers; amending RCW 51.24.030, 51.32.080, 51.32.050, 51.32.060, and 51.36.010; adding a new section to chapter 51.32 RCW; and providing an effective date.

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

Sec. 1. Section 1, chapter 85, Laws of 1977 ex. sess. as amended by section 3, chapter 218, Laws of 1984 and RCW 51.24.030 are each amended to read as follows:

(1) If ~~((an injury to a worker))~~ a third person, not in a worker's same employ, is or may become liable to pay damages on account of a worker's injury for which benefits and compensation are provided under this title ((is due to the negligence or wrong of a third person not in the same employ)), the injured worker or beneficiary may elect to seek damages from the third person.

(2) For the purposes of this chapter, "injury" shall include any physical or mental condition, disease, ailment or loss, including death, for which compensation and benefits are paid or payable under this title.

(3) Damages recoverable by a worker or beneficiary pursuant to the underinsured motorist coverage of an insurance policy shall be subject to this chapter only if the owner of the policy is the employer of the injured worker.

Sec. 2. Section 51.32.080, chapter 23, Laws of 1961 as last amended by section 2, chapter 20, Laws of 1982 1st ex. sess. 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)	\$ ((36,000.00)) <u>54,000.00</u>
Of leg at or above knee joint with functional stump.....	((32,400.00)) <u>48,600.00</u>
Of leg below knee joint	((28,800.00)) <u>43,200.00</u>
Of leg at ankle (Syme)	((25,200.00)) <u>37,800.00</u>
Of foot at mid-metatarsals	((12,600.00)) <u>18,900.00</u>
Of great toe with resection of metatarsal bone	((7,560.00)) <u>11,340.00</u>
Of great toe at metatarsophalangeal joint	((4,536.00)) <u>6,804.00</u>
Of great toe at interphalangeal joint	((2,400.00)) <u>3,600.00</u>

Of lesser toe (2nd to 5th) with resection of metatarsal bone	((2,760.00)) <u>4,140.00</u>
Of lesser toe at metatarsophalangeal joint	((1,344.00)) <u>2,016.00</u>
Of lesser toe at proximal interphalangeal joint	((996.00)) <u>1,494.00</u>
Of lesser toe at distal interphalangeal joint	((252.00)) <u>378.00</u>
Of arm at or above the deltoid insertion or by disarticulation at the shoulder	((36,000.00)) <u>54,000.00</u>
Of arm at any point from below the deltoid insertion to below the elbow joint at the insertion of the biceps tendon	((34,200.00)) <u>51,300.00</u>
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	((32,400.00)) <u>48,600.00</u>
Of all fingers except the thumb at metacarpophalangeal joints	((19,440.00)) <u>29,160.00</u>
Of thumb at metacarpophalangeal joint or with resection of carpometacarpal bone	((12,960.00)) <u>19,440.00</u>
Of thumb at interphalangeal joint	((6,480.00)) <u>9,720.00</u>
Of index finger at metacarpophalangeal joint or with resection of metacarpal bone	((8,100.00)) <u>12,150.00</u>
Of index finger at proximal interphalangeal joint	((6,480.00)) <u>9,720.00</u>
Of index finger at distal interphalangeal joint	((3,564.00)) <u>5,346.00</u>
Of middle finger at metacarpophalangeal joint or with resection of metacarpal bone	((6,480.00)) <u>9,720.00</u>
Of middle finger at proximal interphalangeal joint	((5,184.00)) <u>7,776.00</u>

Of middle finger at distal interphalangeal joint	((2,916.00)) <u>4,374.00</u>
Of ring finger at metacarpophalangeal joint or with resection of metacarpal bone	((3,240.00)) <u>4,860.00</u>
Of ring finger at proximal interphalangeal joint	((2,592.00)) <u>3,888.00</u>
Of ring finger at distal interphalangeal joint	((1,620.00)) <u>2,430.00</u>
Of little finger at metacarpophalangeal joint or with resection of metacarpal bone	((1,620.00)) <u>2,430.00</u>
Of little finger at proximal interphalangeal joint	((1,296.00)) <u>1,944.00</u>
Of little finger at distal interphalangeal joint	((648.00)) <u>972.00</u>

MISCELLANEOUS

Loss of one eye by enucleation	((14,400.00)) <u>21,600.00</u>
Loss of central visual acuity in one eye	((12,000.00)) <u>18,000.00</u>
Complete loss of hearing in both ears	((28,800.00)) <u>43,200.00</u>
Complete loss of hearing in one ear	((4,800.00)) <u>7,200.00</u>

(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 ~~((sixty))~~ 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 ~~((sixty))~~ 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 ~~((forty-five))~~ 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. 3. Section 51.32.050, chapter 23, Laws of 1961 as last amended by section 18, chapter 63, Laws of 1982 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 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 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 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) For claims filed prior to the effective date of this 1986 act, 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 the effective date of this 1986 act, every worker who becomes eligible for permanent total disability benefits shall elect an option as provided in section 4 of this 1986 act.

NEW SECTION. Sec. 4. A new section is added to chapter 51.32 RCW to read as follows:

(1) After a worker elects one of the options in (a), (b), or (c) of this subsection, that option shall apply only if the worker dies during a period of permanent total disability from a cause unrelated to the injury, leaving a surviving spouse, child, children, or other dependent. If, after making an election under this subsection, a worker dies from a cause related to the injury during a period of permanent total disability, his or her beneficiaries shall receive benefits under RCW 51.32.050 (2) through (5).

(a) *Option I.* An injured worker selecting this option shall receive the benefits provided by RCW 51.32.060, with no benefits being paid to the worker's surviving spouse, children, or others.

(b) *Option II.* An injured worker selecting this option shall receive an actuarially reduced benefit which upon death shall be continued throughout the life of and paid to the surviving spouse, child, or other dependent as the worker has nominated by written designation duly executed and filed with the department.

(c) *Option III.* An injured worker selecting this option shall receive an actuarially reduced benefit and, upon death, one-half of the reduced benefit shall be continued throughout the life of and paid to the surviving spouse, child, or other dependent as the worker has nominated by written designation duly executed and filed with the department.

(2) The worker shall make the election in writing and the worker's spouse, if any, shall consent in writing as a prerequisite to the election of Option I.

(3) The department shall adopt such rules as may be necessary to implement this section.

Sec. 5. Section 51.32.060, chapter 23, Laws of 1961 as last amended by section 159, chapter 3, Laws of 1983 and RCW 51.32.060 are each amended to read as follows:

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) 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) 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) 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) 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) 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) 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) 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) 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) 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) 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) 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) 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) 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) 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.

(15) 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.

(16) In no event shall the monthly payments provided in this section exceed seventy-five 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 (14) of this section.

(17) The benefits provided by this section are subject to modification under section 4 of this 1986 act.

Sec. 6. Section 51.36.010, chapter 23, Laws of 1961 as last amended by section 56, chapter 350, Laws of 1977 ex. sess. and RCW 51.36.010 are each amended to read as follows:

Upon the occurrence of any injury to a worker entitled to compensation under the provisions of this title, he or she shall receive proper and necessary medical and surgical services at the hands of a physician of his or her own choice, if conveniently located, and proper and necessary hospital care and services during the period of his or her disability from such injury, but the same shall be limited in point of duration as follows:

In the case of permanent partial disability, not to extend beyond the date when compensation shall be awarded him or her, except when the worker returned to work before permanent partial disability award is made, in such case not to extend beyond the time when monthly allowances to him or her shall cease; in case of temporary disability not to extend beyond the time when monthly allowances to him or her shall cease: PROVIDED, That after any injured worker has returned to his or her work his or her medical and surgical treatment may be continued if, and so long as, such continuation is deemed necessary by the supervisor of industrial insurance to be necessary to his or her more complete recovery; in case of a permanent total disability not to extend beyond the date on which a lump sum settlement is made with him or her or he or she is placed upon the permanent pension roll: PROVIDED, HOWEVER, That the supervisor of industrial insurance, solely in his or her discretion, may authorize continued medical and surgical treatment for conditions previously accepted by the department when such medical and surgical treatment is deemed necessary by the supervisor of industrial insurance to protect such worker's life or provide for the administration of medical and therapeutic measures including payment of prescription medications, but not including those controlled substances currently scheduled by the state board of pharmacy as Schedule I, II, III, or IV substances under chapter 69.50 RCW, which are necessary to alleviate continuing pain which results from the industrial injury. In order to authorize such continued treatment the written order of the supervisor of industrial insurance issued in advance of the continuation shall be necessary.

The supervisor of industrial insurance, the supervisor's designee, or a self-insurer, in his or her sole discretion, may authorize inoculation or other immunological treatment in cases in which a work-related activity has resulted in probable exposure of the worker to a potential infectious occupational disease. Authorization of such treatment does not bind the department or self-insurer in any adjudication of a claim by the same worker or the worker's beneficiary for an occupational disease.

NEW SECTION. Sec. 7. Sections 2 and 3 of this act shall take effect on July 1, 1986.

Passed the House February 12, 1986.

Passed the Senate March 3, 1986.

Approved by the Governor March 12, 1986.

Filed in Office of Secretary of State March 12, 1986.

CHAPTER 59

[Substitute House Bill No. 1875]

INDUSTRIAL INSURANCE—DISABILITY BENEFITS—RETIRED WORKERS

AN ACT Relating to benefits for retired workers and pensioners; amending RCW 51.32.060, 51.32.090, and 51.32.160; reenacting and amending RCW 51.32.090; adding a new section to chapter 51.32 RCW; providing an expiration date; 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 159, chapter 3, Laws of 1983 and RCW 51.32.060 are each amended to read as follows:

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) 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) 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) 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) 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) 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.