

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1726

Chapter 291, Laws of 2011

62nd Legislature
2011 Regular Session

WORKER'S COMPENSATION--VOCATIONAL REHABILITATION

EFFECTIVE DATE: 07/22/11

Passed by the House March 5, 2011
Yeas 96 Nays 1

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 12, 2011
Yeas 46 Nays 0

BRAD OWEN

President of the Senate

Approved May 10, 2011, 3:37 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1726** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 11, 2011

**Secretary of State
State of Washington**

HOUSE BILL 1726

Passed Legislature - 2011 Regular Session

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Sells, Roberts, Ormsby, Reykdal, Kenney, Miloscia, Moeller, and Upthegrove; by request of Department of Labor & Industries

Read first time 02/01/11. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to recommendations of the vocational rehabilitation
2 subcommittee for workers' compensation; amending RCW 51.32.095 and
3 51.32.099; and providing an expiration date.

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

5 **Sec. 1.** RCW 51.32.095 and 2007 c 72 s 1 are each amended to read
6 as follows:

7 (1) One of the primary purposes of this title is to enable the
8 injured worker to become employable at gainful employment. To this
9 end, the department or self-insurers shall utilize the services of
10 individuals and organizations, public or private, whose experience,
11 training, and interests in vocational rehabilitation and retraining
12 qualify them to lend expert assistance to the supervisor of industrial
13 insurance in such programs of vocational rehabilitation as may be
14 reasonable to make the worker employable consistent with his or her
15 physical and mental status. Where, after evaluation and recommendation
16 by such individuals or organizations and prior to final evaluation of
17 the worker's permanent disability and in the sole opinion of the
18 supervisor or supervisor's designee, whether or not medical treatment
19 has been concluded, vocational rehabilitation is both necessary and

1 likely to enable the injured worker to become employable at gainful
2 employment, the supervisor or supervisor's designee may, in his or her
3 sole discretion, pay or, if the employer is a self-insurer, direct the
4 self-insurer to pay the cost as provided in subsection (~~(3)~~) (4) of
5 this section or RCW 51.32.099, as appropriate. An injured worker may
6 not participate in vocational rehabilitation under this section or RCW
7 51.32.099 if such participation would result in a payment of benefits
8 as described in RCW 51.32.240(5), and any benefits so paid shall be
9 recovered according to the terms of that section.

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

14 (a) Return to the previous job with the same employer;

15 (b) Modification of the previous job with the same employer
16 including transitional return to work;

17 (c) A new job with the same employer in keeping with any
18 limitations or restrictions;

19 (d) Modification of a new job with the same employer including
20 transitional return to work;

21 (e) Modification of the previous job with a new employer;

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

24 (g) Modification of a new job with a new employer;

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

27 (i) Short-term retraining and job placement.

28 (3) Notwithstanding subsection (2) of this section, vocational
29 services may be provided to an injured worker who has suffered the loss
30 or complete use of both legs, or arms, or one leg and one arm, or total
31 eyesight when, in the sole discretion of the supervisor or the
32 supervisor's designee, these services will either substantially improve
33 the worker's quality of life or substantially improve the worker's
34 ability to function in an employment setting, regardless of whether or
35 not these services are either necessary or reasonably likely to make
36 the worker employable at any gainful employment. Vocational services
37 must be completed prior to the commencement of the worker's entitlement

1 to benefits under RCW 51.32.060. However, workers who are eligible for
2 vocational services under this subsection are not eligible for option
3 2 benefits, as provided in RCW 51.32.099(4).

4 (4)(a) For vocational plans approved prior to July 1, 1999, costs
5 for vocational rehabilitation benefits allowed by the supervisor or
6 supervisor's designee under subsection (1) of this section may include
7 the cost of books, tuition, fees, supplies, equipment, transportation,
8 child or dependent care, and other necessary expenses for any such
9 worker in an amount not to exceed three thousand dollars in any fifty-
10 two week period (~~except as authorized by RCW 51.60.060~~), and the cost
11 of continuing the temporary total disability compensation under RCW
12 51.32.090 while the worker is actively and successfully undergoing a
13 formal program of vocational rehabilitation.

14 (b) When the department has approved a vocational plan for a worker
15 between July 1, 1999, through December 31, 2007, costs for vocational
16 rehabilitation benefits allowed by the supervisor or supervisor's
17 designee under subsection (1) of this section may include the cost of
18 books, tuition, fees, supplies, equipment, child or dependent care, and
19 other necessary expenses for any such worker in an amount not to exceed
20 four thousand dollars in any fifty-two week period (~~except as~~
21 ~~authorized by RCW 51.60.060~~), and the cost of transportation and
22 continuing the temporary total disability compensation under RCW
23 51.32.090 while the worker is actively and successfully undergoing a
24 formal program of vocational rehabilitation.

25 (c) The expenses allowed under (a) or (b) of this subsection may
26 include training fees for on-the-job training and the cost of
27 furnishing tools and other equipment necessary for self-employment or
28 reemployment. However, compensation or payment of retraining with job
29 placement expenses under (a) or (b) of this subsection may not be
30 authorized for a period of more than fifty-two weeks, except that such
31 period may, in the sole discretion of the supervisor after his or her
32 review, be extended for an additional fifty-two weeks or portion
33 thereof by written order of the supervisor.

34 (d) In cases where the worker is required to reside away from his
35 or her customary residence, the reasonable cost of board and lodging
36 shall also be paid.

37 (e) Costs paid under this subsection shall be chargeable to the

1 employer's cost experience or shall be paid by the self-insurer as the
2 case may be.

3 ~~((4))~~ (5) In addition to the vocational rehabilitation
4 expenditures provided for under subsection ~~((3))~~ (4) of this section
5 and RCW 51.32.099, an additional five thousand dollars may, upon
6 authorization of the supervisor or the supervisor's designee, be
7 expended for: (a) Accommodations for an injured worker that are
8 medically necessary for the worker to participate in an approved
9 retraining plan; and (b) accommodations necessary to perform the
10 essential functions of an occupation in which an injured worker is
11 seeking employment, consistent with the retraining plan or the
12 recommendations of a vocational evaluation. The injured worker's
13 attending physician or licensed advanced registered nurse practitioner
14 must verify the necessity of the modifications or accommodations. The
15 total expenditures authorized in this subsection and the expenditures
16 authorized under RCW 51.32.250 shall not exceed five thousand dollars.

17 ~~((5))~~ (6) When the department has approved a vocational plan for
18 a worker prior to January 1, 2008, regardless of whether the worker has
19 begun participating in the approved plan, costs for vocational
20 rehabilitation benefits allowed by the supervisor or supervisor's
21 designee under subsection (1) of this section are limited to those
22 provided under subsections ~~((3))~~ (4) and ~~((4))~~ (5) of this section.

23 For vocational plans approved for a worker between January 1, 2008,
24 through June 30, 2013, total vocational costs allowed by the supervisor
25 or supervisor's designee under subsection (1) of this section shall be
26 limited to those provided under the pilot program established in RCW
27 51.32.099, and vocational rehabilitation services shall conform to the
28 requirements in RCW 51.32.099.

29 ~~((6))~~ (7) The department shall establish criteria to monitor the
30 quality and effectiveness of rehabilitation services provided by the
31 individuals and organizations used under subsection (1) of this section
32 and under RCW 51.32.099. The state fund shall make referrals for
33 vocational rehabilitation services based on these performance criteria.

34 ~~((7))~~ (8) The department shall engage in, where feasible and
35 cost-effective, a cooperative program with the state employment
36 security department to provide job placement services under this
37 section and RCW 51.32.099.

1 ~~((8))~~ (9) The benefits in this section and RCW 51.32.099 shall be
2 provided for the injured workers of self-insured employers. Self-
3 insurers shall report both benefits provided and benefits denied under
4 this section and RCW 51.32.099 in the manner prescribed by the
5 department by rule adopted under chapter 34.05 RCW. The director may,
6 in his or her sole discretion and upon his or her own initiative or at
7 any time that a dispute arises under this section or RCW 51.32.099,
8 promptly make such inquiries as circumstances require and take such
9 other action as he or she considers will properly determine the matter
10 and protect the rights of the parties.

11 ~~((9))~~ (10) Except as otherwise provided in this section or RCW
12 51.32.099, the benefits provided for in this section and RCW 51.32.099
13 are available to any otherwise eligible worker regardless of the date
14 of industrial injury. However, claims shall not be reopened solely for
15 vocational rehabilitation purposes.

16 **Sec. 2.** RCW 51.32.099 and 2009 c 353 s 5 are each amended to read
17 as follows:

18 (1)(a) The legislature intends to create improved vocational
19 outcomes for Washington state injured workers and employers through
20 legislative and regulatory change under a pilot program for the period
21 of January 1, 2008, through June 30, 2013. This pilot vocational
22 system is intended to allow opportunities for eligible workers to
23 participate in meaningful retraining in high-demand occupations,
24 improve successful return to work and achieve positive outcomes for
25 workers, reduce the incidence of repeat vocational services, increase
26 accountability and responsibility, and improve cost predictability. To
27 facilitate the study and evaluation of the results of the proposed
28 changes, the department shall establish the temporary funding of
29 certain state fund vocational costs through the medical aid account to
30 ensure the appropriate assessments to employers for the costs of their
31 claims for vocational services in accordance with RCW 51.32.0991.

32 (b) An independent review and study of the effects of the pilot
33 program shall be conducted to determine whether it has achieved the
34 appropriate outcomes at reasonable cost to the system. The review
35 shall include, at a minimum, a report on the department's performance
36 with regard to the provision of vocational services, the skills
37 acquired by workers who receive retraining services, the types of

1 training programs approved, whether the workers are employed, at what
2 jobs and wages after completion of the training program and at various
3 times subsequent to their claim closure, the number and demographics of
4 workers who choose the option provided in subsection (4)(b) of this
5 section, and their employment and earnings status at various times
6 subsequent to claim closure. The department may adopt rules, in
7 collaboration with the subcommittee created under (c)(iii) of this
8 subsection, to further define the scope and elements of the required
9 study. Reports of the independent researcher are due on December 1,
10 2010, December 1, 2011, and December 1, 2012.

11 (c) In implementing the pilot program, the department shall:

12 (i) Establish a vocational initiative project that includes
13 participation by the department as a partner with WorkSource, the
14 established state system that administers the federal workforce
15 investment act of 1998. As a partner, the department shall place
16 vocational professional full-time employees at pilot WorkSource
17 locations; refer some workers for vocational services to these
18 vocational professionals; and work with employers in work source pilot
19 areas to market the benefits of on-the-job training programs and with
20 community colleges to reserve slots in high employer demand programs of
21 study as defined in RCW 28B.50.030. These on-the-job training programs
22 and community college slots may be considered by both department and
23 private sector vocational professionals for vocational plan
24 development. The department will also assist stakeholders in
25 developing additional vocational training programs in various
26 industries, including but not limited to agriculture and construction.
27 These programs will expand the choices available to injured workers in
28 developing their vocational training plans with the assistance of
29 vocational professionals.

30 (ii) Develop and maintain a register of state fund and self-insured
31 workers who have been retrained or have selected any of the vocational
32 options described in this section for at least the duration of the
33 pilot program.

34 (iii) Create a vocational rehabilitation subcommittee made up of
35 members appointed by the director for at least the duration of the
36 pilot program. This subcommittee shall provide the business and labor
37 partnership needed to maintain focus on the intent of the pilot
38 program, as described in this section, and provide consistency and

1 transparency to the development of rules and policies. The
2 subcommittee shall report to the director at least annually and
3 recommend to the director and the legislature any additional statutory
4 changes needed, which may include extension of the pilot period. The
5 subcommittee shall provide input and oversight with the department
6 concerning the study required under (b) of this subsection. The
7 subcommittee shall provide recommendations for additional changes or
8 incentives for injured workers to return to work with their employer of
9 injury.

10 (iv) The department shall develop an annual report concerning
11 Washington's workers' compensation vocational rehabilitation system to
12 the legislature and to the subcommittee by December 1, 2009, and
13 annually thereafter with the final report due by December 1, 2012. The
14 annual report shall include the number of workers who have participated
15 in more than one vocational training plan beginning with plans approved
16 on January 1, 2008, and in which industries those workers were
17 employed. The final report shall include the department's assessment
18 and recommendations for further legislative action, in collaboration
19 with the subcommittee.

20 (2)(a) For the purposes of this section, the day the worker
21 commences vocational plan development means the date the department or
22 self-insurer notifies the worker of his or her eligibility for plan
23 development services or of an eligibility determination in response to
24 a dispute of a vocational decision.

25 (b) When the supervisor or supervisor's designee has decided that
26 vocational rehabilitation is both necessary and likely to make the
27 worker employable at gainful employment, he or she shall be provided
28 with services necessary to develop a vocational plan that, if
29 completed, would render the worker employable. The vocational
30 professional assigned to the claim shall, at the initial meeting with
31 the worker, fully inform the worker of the return-to-work priorities
32 set forth in RCW 51.32.095(2) and of his or her rights and
33 responsibilities under the workers' compensation vocational system.
34 The department shall provide tools to the vocational professional for
35 communicating this and other information required by RCW 51.32.095 and
36 this section to the worker.

37 (c) On the date the worker commences vocational plan development,
38 the department shall also inform the employer in writing of the

1 employer's right to make a valid return-to-work offer during the first
2 fifteen days following the commencement of vocational plan development.
3 (~~To be valid, the offer must be for bona fide employment with the~~
4 ~~employer of injury, consistent with the worker's documented physical~~
5 ~~and mental restrictions as provided by the worker's health care~~
6 ~~provider. When the employer makes a valid return to work offer, the~~
7 ~~vocational plan development services and temporary total disability~~
8 ~~compensation shall be terminated effective on the starting date for the~~
9 ~~job without regard to whether the worker accepts the return to work~~
10 ~~offer. Following the fifteen day period, the employer may still~~
11 ~~provide, and the worker may accept, any valid return to work offer.~~
12 ~~The worker's acceptance of such an offer shall result in the~~
13 ~~termination of vocational plan development or implementation services~~
14 ~~and temporary total disability compensation effective the day the~~
15 ~~employment begins.)) However, at the sole discretion of the supervisor
16 or the supervisor's designee, an employer may be granted an extension
17 of time of up to ten additional days to make a valid return-to-work
18 offer. The additional days may be allowed by the department with or
19 without a request from the employer. The extension may only be granted
20 if the employer made a return-to-work offer to the worker within
21 fifteen days of the date the worker commenced vocational plan
22 development that met some but not all of the requirements in this
23 section. To be valid, the offer must be for bona fide employment with
24 the employer of injury, consistent with the worker's documented
25 physical and mental restrictions as provided by the worker's health
26 care provider. When the employer makes a valid return-to-work offer,
27 the vocational plan development services and temporary total disability
28 compensation shall be terminated effective on the starting date for the
29 job without regard to whether the worker accepts the return-to-work
30 offer.~~

31 (d) Following the time period described in (c) of this subsection,
32 the employer may still provide, and the worker may accept, any valid
33 return-to-work offer. The worker's acceptance of such an offer shall
34 result in the termination of vocational plan development or
35 implementation services and temporary total disability compensation
36 effective the day the employment begins.

37 (3)(a) All vocational plans must contain an accountability
38 agreement signed by the worker detailing expectations regarding

1 progress, attendance, and other factors influencing successful
2 participation in the plan. Failure to abide by the agreed expectations
3 shall result in suspension of vocational benefits pursuant to RCW
4 51.32.110.

5 (b) Any formal education included as part of the vocational plan
6 must be for an accredited or licensed program or other program approved
7 by the department. The department shall develop rules that provide
8 criteria for the approval of nonaccredited or unlicensed programs.

9 (c) The vocational plan for an individual worker must be completed
10 and submitted to the department within ninety days of the day the
11 worker commences vocational plan development. The department may
12 extend the ninety days for good cause. Criteria for good cause shall
13 be provided in rule. The frequency and reasons for good cause
14 extensions shall be reported to the subcommittee created under
15 subsection (1)(c)(iii) of this section.

16 (d) Costs for the vocational plan may include books, tuition, fees,
17 supplies, equipment, child or dependent care, training fees for on-the-
18 job training, the cost of furnishing tools and other equipment
19 necessary for self-employment or reemployment, and other necessary
20 expenses in an amount not to exceed twelve thousand dollars. This
21 amount shall be adjusted effective July 1 of each year for vocational
22 plans or retraining benefits available under subsection (4)(b) of this
23 section approved on or after this date but before June 30 of the next
24 year based on the average percentage change in tuition for the next
25 fall quarter for all Washington state community colleges.

26 (e) The duration of the vocational plan shall not exceed two years
27 from the date the plan is implemented. The worker shall receive
28 temporary total disability compensation under RCW 51.32.090 and the
29 cost of transportation while he or she is actively and successfully
30 participating in a vocational plan.

31 (f) If the worker is required to reside away from his or her
32 customary residence, the reasonable cost of board and lodging shall
33 also be paid.

34 (4) Vocational plan development services shall be completed within
35 ninety days of commencing. Except as provided in RCW 51.32.095(3),
36 during vocational plan development the worker shall, with the
37 assistance of a vocational professional, participate in vocational
38 counseling and occupational exploration to include, but not be limited

1 to, identifying possible job goals, training needs, resources, and
2 expenses, consistent with the worker's physical and mental status. A
3 vocational rehabilitation plan shall be developed by the worker and the
4 vocational professional and submitted to the department or
5 self-insurer. Following this submission, the worker shall elect one of
6 the following options:

7 (a) Option 1: The department or self-insurer implements and the
8 worker participates in the vocational plan developed by the vocational
9 professional and approved by the worker and the department or
10 self-insurer. For state fund claims, the department must review and
11 approve the vocational plan before implementation may begin. If the
12 department takes no action within fifteen days, the plan is deemed
13 approved. The worker may, within fifteen days of the department's
14 approval of the plan ((by the department)) or of a determination that
15 the plan is valid following a dispute, elect option 2. However, in the
16 sole discretion of the supervisor or supervisor's designee, the
17 department may approve an election for option 2 benefits that was
18 submitted in writing within twenty-five days of the department's
19 approval of the plan or of a determination that the plan is valid
20 following a dispute if the worker provides a written explanation
21 establishing that he or she was unable to submit his or her election of
22 option 2 benefits within fifteen days. In no circumstance may the
23 department approve of an election for option 2 benefits that was
24 submitted more than twenty-five days after the department's approval of
25 a retraining plan or of a determination that a plan is valid following
26 a dispute.

27 (i) Following successful completion of the vocational plan, any
28 subsequent assessment of whether vocational rehabilitation is both
29 necessary and likely to enable the injured worker to become employable
30 at gainful employment under RCW 51.32.095(1) shall include
31 consideration of transferable skills obtained in the vocational plan.

32 (ii) If a vocational plan is successfully completed on a claim
33 which is thereafter reopened as provided in RCW 51.32.160, the cost and
34 duration available for any subsequent vocational plan is limited to
35 that in subsection (3)(d) and (e) of this section, less that previously
36 expended.

37 (b) Option 2: The worker declines further vocational services
38 under the claim and receives an amount equal to six months of temporary

1 total disability compensation under RCW 51.32.090. The award is
2 payable in biweekly payments in accordance with the schedule of
3 temporary total disability payments, until such award is paid in full.
4 These payments shall not include interest on the unpaid balance.
5 However, upon application by the worker, and at the discretion of the
6 department, the compensation may be converted to a lump sum payment.
7 The vocational costs defined in subsection (3)(d) of this section shall
8 remain available to the worker, upon application to the department or
9 self-insurer, for a period of five years. The vocational costs shall,
10 if expended, be available for programs or courses at any accredited or
11 licensed institution or program from a list of those approved by the
12 department for tuition, books, fees, supplies, equipment, and tools,
13 without department or self-insurer oversight. The department shall
14 issue an order as provided in RCW 51.52.050 confirming the option 2
15 election, setting a payment schedule, and terminating temporary total
16 disability benefits effective the date of the order confirming that
17 election. The department shall thereafter close the claim. A worker
18 who elects option 2 benefits shall not be entitled to further temporary
19 total, or to permanent total, disability benefits except upon a showing
20 of a worsening in the condition or conditions accepted under the claim
21 such that claim closure is not appropriate, in which case the option 2
22 selection will be rescinded and the amount paid to the worker will be
23 assessed as an overpayment. A claim that was closed based on the
24 worker's election of option 2 benefits may be reopened as provided in
25 RCW 51.32.160, but cannot be reopened for the sole purpose of allowing
26 the worker to seek vocational assistance.

27 (i) If within five years from the date the option 2 order becomes
28 final, the worker is subsequently injured or suffers an occupational
29 disease or reopens the claim as provided in RCW 51.32.160, and
30 vocational rehabilitation is found both necessary and likely to enable
31 the injured worker to become employable at gainful employment under RCW
32 51.32.095(1), the duration of any vocational plan under subsection
33 (3)(e) of this section shall not exceed eighteen months.

34 (ii) If the available vocational costs are utilized by the worker,
35 any subsequent assessment of whether vocational rehabilitation is both
36 necessary and likely to enable the injured worker to become employable
37 at gainful employment under RCW 51.32.095(1) shall include
38 consideration of the transferable skills obtained.

1 (iii) If the available vocational costs are utilized by the worker
2 and the claim is thereafter reopened as provided in RCW 51.32.160, the
3 cost available for any vocational plan is limited to that in subsection
4 (3)(d) of this section less that previously expended.

5 (iv) Option 2 may only be elected once per worker.

6 (c) The director, in his or her sole discretion, may provide the
7 worker vocational assistance not to exceed that in subsection (3) of
8 this section, without regard to the worker's prior option selection or
9 benefits expended, where vocational assistance would prevent permanent
10 total disability under RCW 51.32.060.

11 (5)(a) As used in this section, "vocational plan interruption"
12 means an occurrence which disrupts the plan to the extent the
13 employability goal is no longer attainable. "Vocational plan
14 interruption" does not include institutionally scheduled breaks in
15 educational programs, occasional absence due to illness, or
16 modifications to the plan which will allow it to be completed within
17 the cost and time provisions of subsection (3)(d) and (e) of this
18 section.

19 (b) When a vocational plan interruption is beyond the control of
20 the worker, the department or self-insurer shall recommence plan
21 development. If necessary to complete vocational services, the cost
22 and duration of the plan may include credit for that expended prior to
23 the interruption. A vocational plan interruption is considered outside
24 the control of the worker when it is due to the closure of the
25 accredited institution, when it is due to a death in the worker's
26 immediate family, or when documented changes in the worker's accepted
27 medical conditions prevent further participation in the vocational
28 plan.

29 (c) When a vocational plan interruption is the result of the
30 worker's actions, the worker's entitlement to benefits shall be
31 suspended in accordance with RCW 51.32.110. If plan development or
32 implementation is recommenced, the cost and duration of the plan shall
33 not include credit for that expended prior to the interruption. A
34 vocational plan interruption is considered a result of the worker's
35 actions when it is due to the failure to meet attendance expectations
36 set by the training or educational institution, failure to achieve
37 passing grades or acceptable performance review, unaccepted or

1 postinjury conditions that prevent further participation in the
2 vocational plan, or the worker's failure to abide by the accountability
3 agreement per subsection (3)(a) of this section.

4 NEW SECTION. **Sec. 3.** This act expires June 30, 2013.

Passed by the House March 5, 2011.

Passed by the Senate April 12, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.