

**RCW 51.44.040 Second injury fund.** (1) There is in the office of the state treasurer a fund to be known and designated as the "second injury fund," which may be used only for the purpose of defraying charges against employers and for supporting return-to-work outcomes for injured workers as provided in RCW 51.16.120, 51.32.095(4), and 51.32.250. The fund must be administered by the director. The state treasurer must be the custodian of the second injury fund and is authorized to disburse moneys from it only upon written order of the director.

(2) Payments to the second injury fund from the accident fund must be made pursuant to rules adopted by the director. Costs of these payments may not affect the experience rating of employers insured by the state fund.

(3) (a) Assessments for the second injury fund must be imposed on self-insurers pursuant to rules adopted by the director. Such rules must provide for at least the following:

(i) Except as provided in (a)(ii) of this subsection, the amount assessed each self-insurer must be in the proportion that the payments made from the fund on account of claims made against self-insurers bears to the total sum of payments from the fund.

(ii) Except as provided in section 2, chapter 475, Laws of 2005, beginning with assessments imposed on or after July 1, 2009, the department must experience rate the amount assessed each self-insurer as long as the aggregate amount assessed is in the proportion that the payments made from the fund on account of claims made against self-insurers bears to the total sum of payments from the fund. The experience rating factor must provide equal weight to the ratio between expenditures made by the second injury fund for claims of the self-insurer to the total expenditures made by the second injury fund for claims of all self-insurers for the prior three fiscal years and the ratio of workers' compensation claim payments under this title made by the self-insurer to the total worker's compensation claim payments made by all self-insurers under this title for the prior three fiscal years. The weighted average of these two ratios must be divided by the latter ratio to arrive at the experience factor.

(b) For purposes of this subsection, "expenditures made by the second injury fund" mean the costs and charges described under RCW 51.32.250 and 51.16.120(4), and the amounts assessed to the second injury fund as described under RCW 51.16.120(1). Under no circumstances does "expenditures made by the second injury fund" include any subsequent payments, assessments, or adjustments for pensions, where the applicable second injury fund entitlement was established outside of the three fiscal years. [2015 c 137 § 6; 2005 c 475 § 1; 1982 c 63 § 14; 1977 ex.s. c 323 § 21; 1972 ex.s. c 43 § 27; 1961 c 23 § 51.44.040. Prior: 1959 c 308 § 17; 1947 c 183 § 1; 1945 c 219 § 2; Rem. Supp. 1947 § 7676-1b.]

**Application—2015 c 137 §§ 1, 2, and 6:** See note following RCW 51.16.120.

**Rules—2015 c 137:** See note following RCW 51.32.096.

**Contingent expiration date—Outcome study—Report—2005 c 475:**  
"(1) If the outcome study conducted by the department of labor and industries under subsection (2)(a)(i) or (ii) of this section shows a negative impact of fifteen percent or more to workers following claim

closure among nonpension self-insured claimants, section 1, chapter 475, Laws of 2005 expires June 30, 2013.

(2) The department shall conduct an outcome study of the experience rating system established in section 1, chapter 475, Laws of 2005. In conducting the study, the department must:

(a) Compare the outcomes for workers of self-insured employers whose industrial insurance claims with temporary total disability benefits for more than thirty days are closed between July 1, 2002, and June 30, 2004, with similar claims of workers of self-insured employers closed between July 1, 2009, and June 30, 2011. For the purposes of subsection (1) of this section, the department must provide two separate comparisons of such workers as follows: (i) The first comparison includes the aggregate preinjury wages for all nonpension injured workers compared with their aggregate wages at claim closure in each of the two study groups; and (ii) the second comparison includes the proportion of all nonpension injured workers who are found able to work but have not returned to work, as reported by self-insurers in the eligibility assessment reports submitted to the department on the claims in the first study group, compared with the proportion of such workers who are found able to work but have not returned to work, as reported in the eligibility assessment reports submitted on claims in the second study group;

(b) Study whether the workers potentially impacted by the experience rating program have improved return-to-work outcomes, whether the number of impacted workers found to be employable increases, whether there is a change in long-term disability outcomes among the impacted workers, and whether the number of permanent total disability pensions among impacted workers is affected and, if so, the nature of the impact; and

(c) Develop, in consultation with representatives of the impacted workers and the self-insured community, a study methodology that must be provided to the workers' compensation advisory committee for review and comment. The study methodology must include appropriate controls to account for economic fluctuation, wage inflation, and other independent variables.

(3) The department must report to the appropriate committees of the legislature by December 1, 2012, on the results of the study." [2005 c 475 § 2.] The department report issued in December 2012 stated there was no evidence of a negative impact on injured workers of fifteen percent or more. Section 1, chapter 475, Laws of 2005 does not expire.

**Effective dates—Implementation—1982 c 63:** See note following RCW 51.32.095.

**Severability—Effective date—1977 ex.s. c 323:** See notes following RCW 51.04.040.