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SENATE BILL 5582

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Conway and Kohl-Welles; by request of Department of Labor & Industries

Read first time 01/31/11. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to administrative efficiencies for the workers'  
2 compensation program; amending RCW 51.04.030, 51.04.082, 51.16.140,  
3 51.24.060, 51.32.073, 51.32.240, 51.48.120, 51.48.150, and 51.52.050;  
4 and adding a new section to chapter 51.14 RCW.

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

6 **Sec. 1.** RCW 51.04.030 and 2004 c 65 s 1 are each amended to read  
7 as follows:

8 (1) The director shall supervise the providing of prompt and  
9 efficient care and treatment, including care provided by physician  
10 assistants governed by the provisions of chapters 18.57A and 18.71A  
11 RCW, acting under a supervising physician, including chiropractic care,  
12 and including care provided by licensed advanced registered nurse  
13 practitioners, to workers injured during the course of their employment  
14 at the least cost consistent with promptness and efficiency, without  
15 discrimination or favoritism, and with as great uniformity as the  
16 various and diverse surrounding circumstances and locations of  
17 industries will permit and to that end shall, from time to time,  
18 establish and adopt and supervise the administration of printed forms,  
19 rules, regulations, and practices for the furnishing of such care and

1 treatment: PROVIDED, That the medical coverage decisions of the  
2 department do not constitute a "rule" as used in RCW 34.05.010(16), nor  
3 are such decisions subject to the rule-making provisions of chapter  
4 34.05 RCW except that criteria for establishing medical coverage  
5 decisions shall be adopted by rule after consultation with the workers'  
6 compensation advisory committee established in RCW 51.04.110: PROVIDED  
7 FURTHER, That the department may recommend to an injured worker  
8 particular health care services and providers where specialized  
9 treatment is indicated or where cost effective payment levels or rates  
10 are obtained by the department: AND PROVIDED FURTHER, That the  
11 department may enter into contracts for goods and services including,  
12 but not limited to, durable medical equipment so long as statewide  
13 access to quality service is maintained for injured workers.

14 (2) The director shall, in consultation with interested persons,  
15 establish and, in his or her discretion, periodically change as may be  
16 necessary, and make available a fee schedule of the maximum charges to  
17 be made by any physician, surgeon, chiropractor, hospital, druggist,  
18 licensed advanced registered nurse practitioner, physicians' assistants  
19 as defined in chapters 18.57A and 18.71A RCW, acting under a  
20 supervising physician or other agency or person rendering services to  
21 injured workers. The department shall coordinate with other state  
22 purchasers of health care services to establish as much consistency and  
23 uniformity in billing and coding practices as possible, taking into  
24 account the unique requirements and differences between programs. No  
25 service covered under this title, including services provided to  
26 injured workers, whether aliens or other injured workers, who are not  
27 residing in the United States at the time of receiving the services,  
28 shall be charged or paid at a rate or rates exceeding those specified  
29 in such fee schedule, and no contract providing for greater fees shall  
30 be valid as to the excess. The establishment of such a schedule,  
31 exclusive of conversion factors, does not constitute "agency action" as  
32 used in RCW 34.05.010(3), nor does such a fee schedule and its  
33 associated billing or payment instructions and policies constitute a  
34 "rule" as used in RCW 34.05.010(16).

35 (3) The director or self-insurer, as the case may be, shall make a  
36 record of the commencement of every disability and the termination  
37 thereof and, when bills are rendered for the care and treatment of  
38 injured workers, shall approve and pay those which conform to the

1 adopted rules, regulations, established fee schedules, and practices of  
2 the director and may reject any bill or item thereof incurred in  
3 violation of the principles laid down in this section or the rules,  
4 regulations, or the established fee schedules and rules and regulations  
5 adopted under it.

6 **Sec. 2.** RCW 51.04.082 and 1986 c 9 s 2 are each amended to read as  
7 follows:

8 Any notice or order required by this title to be mailed to any  
9 employer may be served in the manner prescribed by law for personal  
10 service of summons and complaint in the commencement of actions in the  
11 superior courts of the state, but if the notice or order is mailed, it  
12 shall be addressed to the address of the employer as shown by the  
13 records of the department, or, if no such address is shown, to such  
14 address as the department is able to ascertain by reasonable effort.  
15 If requested by the employer, any notice or order may be sent  
16 electronically. Failure of the employer to receive such notice or  
17 order whether served or mailed shall not release the employer from any  
18 tax or any increases or penalties thereon.

19 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.14 RCW  
20 to read as follows:

21 (1) When a self-insurer has determined to allow an industrial  
22 insurance claim, the self-insurer must issue an order to the injured  
23 worker, the last known attending medical provider, and the department  
24 within sixty days from the date of notice of a claim. If an allowance  
25 order is not issued within the required time, the claim will be deemed  
26 allowed.

27 (2) When a self-insurer determines that a claim should be denied,  
28 the self-insurer must forward the claim to the department with a  
29 request for denial within sixty days from the date of notice of a  
30 claim. If the denial request is not received within the required time,  
31 the claim will be deemed allowed.

32 (3) When a self-insurer has determined to reopen an industrial  
33 insurance claim, the self-insurer must issue an order to the injured  
34 worker, the medical provider named on the worker's reopening  
35 application, and the department within ninety days of receipt of the  
36 worker's request by the self-insurer. If a reopening order is not

1 issued within the required time, the application will be deemed  
2 granted. This authority is limited to those reopening applications  
3 made within seven years from the date the first closing order became  
4 final.

5 (4) When a self-insurer determines that an application for  
6 reopening should be denied, the self-insurer must forward the claim to  
7 the department with a request for denial within seventy days from the  
8 date the reopening application is received. The department requires a  
9 minimum of twenty days to review the request and issue a further order.  
10 If the denial order is not issued within the required time, the  
11 reopening application will be deemed granted in accordance with RCW  
12 51.32.160.

13 (5) The self-insurer may extend the time for issuing the orders in  
14 this section by an additional sixty days for good cause by providing  
15 written notice to both the injured worker and the department prior to  
16 the expiration of the initial time limit.

17 (6) A self-insurer may issue an order to establish a worker's  
18 monthly wage at the time of injury in accordance with RCW 51.08.178.  
19 When a self-insurer issues a wage order, the self-insurer must send a  
20 copy of the order and the documentation used to calculate the wage to  
21 the worker and the department. A wage order is not required for the  
22 payment of temporary disability compensation under RCW 51.32.090. The  
23 department will not issue wage orders on behalf of self-insurers.

24 (7) The department will, for each order listed in subsections (1)  
25 through (6) of this section, develop the form and content of the order  
26 to be used by self-insurers. All orders issued by self-insurers must  
27 be substantially similar to the order developed by the department.  
28 Self-insurers who fail to use substantially similar orders will be  
29 subject to penalty. The department may develop additional information  
30 that must accompany orders including explanatory letters.

31 (8) Protests to orders of self-insurers shall be reviewed by the  
32 department. The department will issue a further determinative order as  
33 provided in RCW 51.52.050. If no protest is timely filed, any order  
34 issued by the self-insurer that is substantially similar to the order  
35 developed by the department will become final and will have the same  
36 force and effect as a department order that has become final under RCW  
37 51.52.050.

1 (9) The department may intervene in any open claim to resolve a  
2 dispute at the request of an interested party, or may initiate an  
3 inquiry independently. In these cases, the department may issue orders  
4 in accordance with RCW 51.52.050.

5 (10) If the self-insurer does not issue timely orders as required  
6 by this section, they will be subject to penalties payable to the  
7 worker. The department is authorized to establish in rule the penalty  
8 schedule for violations of this section.

9 **Sec. 4.** RCW 51.16.140 and 1989 c 385 s 3 are each amended to read  
10 as follows:

11 (1) Every employer who is not a self-insurer (~~(shall)~~) may deduct  
12 from the pay of each of his or her workers one-half of the amount he or  
13 she is required to pay, for medical benefits within each risk  
14 classification. Such amount shall be periodically determined by the  
15 director and reported by him or her to all employers under this title:  
16 PROVIDED, That the state governmental unit shall pay the entire amount  
17 into the medical aid fund for volunteers, as defined in RCW 51.12.035,  
18 and the state apprenticeship council shall pay the entire amount into  
19 the medical aid fund for registered apprentices or trainees, for the  
20 purposes of RCW 51.12.130. The deduction under this section is not  
21 authorized for premiums assessed under RCW 51.16.210.

22 (2) It shall be unlawful for the employer, unless specifically  
23 authorized by this title, to deduct or obtain any part of the premium  
24 or other costs required to be by him or her paid from the wages or  
25 earnings of any of his or her workers, and the making of or attempt to  
26 make any such deduction shall be a gross misdemeanor.

27 **Sec. 5.** RCW 51.24.060 and 2001 c 146 s 9 are each amended to read  
28 as follows:

29 (1) If the injured worker or beneficiary elects to seek damages  
30 from the third person, any recovery made shall be distributed as  
31 follows:

32 (a) The costs and reasonable attorneys' fees shall be paid  
33 proportionately by the injured worker or beneficiary and the department  
34 and/or self-insurer: PROVIDED, That the department and/or self-insurer  
35 may require court approval of costs and attorneys' fees or may petition

1 a court for determination of the reasonableness of costs and attorneys'  
2 fees;

3 (b) The injured worker or beneficiary shall be paid twenty-five  
4 percent of the balance of the award: PROVIDED, That in the event of a  
5 compromise and settlement by the parties, the injured worker or  
6 beneficiary may agree to a sum less than twenty-five percent;

7 (c) The department and/or self-insurer shall be paid the balance of  
8 the recovery made, but only to the extent necessary to reimburse the  
9 department and/or self-insurer for benefits paid;

10 (i) The department and/or self-insurer shall bear its proportionate  
11 share of the costs and reasonable attorneys' fees incurred by the  
12 worker or beneficiary to the extent of the benefits paid under this  
13 title: PROVIDED, That the department's and/or self-insurer's  
14 proportionate share shall not exceed one hundred percent of the costs  
15 and reasonable attorneys' fees;

16 (ii) The department's and/or self-insurer's proportionate share of  
17 the costs and reasonable attorneys' fees shall be determined by  
18 dividing the gross recovery amount into the benefits paid amount and  
19 multiplying this percentage times the costs and reasonable attorneys'  
20 fees incurred by the worker or beneficiary;

21 (iii) The department's and/or self-insurer's reimbursement share  
22 shall be determined by subtracting their proportionate share of the  
23 costs and reasonable attorneys' fees from the benefits paid amount;

24 (d) Any remaining balance shall be paid to the injured worker or  
25 beneficiary; and

26 (e) Thereafter no payment shall be made to or on behalf of a worker  
27 or beneficiary by the department and/or self-insurer for such injury  
28 until the amount of any further compensation and benefits shall equal  
29 any such remaining balance minus the department's and/or self-insurer's  
30 proportionate share of the costs and reasonable attorneys' fees in  
31 regards to the remaining balance. This proportionate share shall be  
32 determined by dividing the gross recovery amount into the remaining  
33 balance amount and multiplying this percentage times the costs and  
34 reasonable attorneys' fees incurred by the worker or beneficiary.  
35 Thereafter, such benefits shall be paid by the department and/or self-  
36 insurer to or on behalf of the worker or beneficiary as though no  
37 recovery had been made from a third person.

1 (2) The recovery made shall be subject to a lien by the department  
2 and/or self-insurer for its share under this section.

3 (3) The department or self-insurer has sole discretion to  
4 compromise the amount of its lien. In deciding whether or to what  
5 extent to compromise its lien, the department or self-insurer shall  
6 consider at least the following:

7 (a) The likelihood of collection of the award or settlement as may  
8 be affected by insurance coverage, solvency, or other factors relating  
9 to the third person;

10 (b) Factual and legal issues of liability as between the injured  
11 worker or beneficiary and the third person. Such issues include but  
12 are not limited to possible contributory negligence and novel theories  
13 of liability; and

14 (c) Problems of proof faced in obtaining the award or settlement.

15 (4) In an action under this section, the self-insurer may act on  
16 behalf and for the benefit of the department to the extent of any  
17 compensation and benefits paid or payable from state funds.

18 (5) It shall be the duty of the person to whom any recovery is paid  
19 before distribution under this section to advise the department or  
20 self-insurer of the fact and amount of such recovery, the costs and  
21 reasonable attorneys' fees associated with the recovery, and to  
22 distribute the recovery in compliance with this section.

23 (6) The distribution of any recovery made by award or settlement of  
24 the third party action shall be confirmed by department order, served  
25 by (~~registered or certified mail~~) a method for which receipt can be  
26 confirmed or tracked, and shall be subject to chapter 51.52 RCW. In  
27 the event the order of distribution becomes final under chapter 51.52  
28 RCW, the director or the director's designee may file with the clerk of  
29 any county within the state a warrant in the amount of the sum  
30 representing the unpaid lien plus interest accruing from the date the  
31 order became final. The clerk of the county in which the warrant is  
32 filed shall immediately designate a superior court cause number for  
33 such warrant and the clerk shall cause to be entered in the judgment  
34 docket under the superior court cause number assigned to the warrant,  
35 the name of such worker or beneficiary mentioned in the warrant, the  
36 amount of the unpaid lien plus interest accrued and the date when the  
37 warrant was filed. The amount of such warrant as docketed shall become  
38 a lien upon the title to and interest in all real and personal property

1 of the injured worker or beneficiary against whom the warrant is  
2 issued, the same as a judgment in a civil case docketed in the office  
3 of such clerk. The sheriff shall then proceed in the same manner and  
4 with like effect as prescribed by law with respect to execution or  
5 other process issued against rights or property upon judgment in the  
6 superior court. Such warrant so docketed shall be sufficient to  
7 support the issuance of writs of garnishment in favor of the department  
8 in the manner provided by law in the case of judgment, wholly or  
9 partially unsatisfied. The clerk of the court shall be entitled to a  
10 filing fee under RCW 36.18.012(10), which shall be added to the amount  
11 of the warrant. A copy of such warrant shall be mailed to the injured  
12 worker or beneficiary within three days of filing with the clerk.

13 (7) The director, or the director's designee, may issue to any  
14 person, firm, corporation, municipal corporation, political subdivision  
15 of the state, public corporation, or agency of the state, a notice and  
16 order to withhold and deliver property of any kind if he or she has  
17 reason to believe that there is in the possession of such person, firm,  
18 corporation, municipal corporation, political subdivision of the state,  
19 public corporation, or agency of the state, property which is due,  
20 owing, or belonging to any worker or beneficiary upon whom a warrant  
21 has been served by the department for payments due to the state fund.  
22 The notice and order to withhold and deliver shall be served by the  
23 sheriff of the county or by the sheriff's deputy; by ~~((certified mail,~~  
24 ~~return receipt requested))~~ a method for which receipt can be confirmed  
25 or tracked; or by any authorized representatives of the director. Any  
26 person, firm, corporation, municipal corporation, political subdivision  
27 of the state, public corporation, or agency of the state upon whom  
28 service has been made shall answer the notice within twenty days  
29 exclusive of the day of service, under oath and in writing, and shall  
30 make true answers to the matters inquired of in the notice and order to  
31 withhold and deliver. In the event there is in the possession of the  
32 party named and served with such notice and order, any property which  
33 may be subject to the claim of the department, such property shall be  
34 delivered forthwith to the director or the director's authorized  
35 representative upon demand. If the party served and named in the  
36 notice and order fails to answer the notice and order within the time  
37 prescribed in this section, the court may, after the time to answer  
38 such order has expired, render judgment by default against the party



1 named in the notice for the full amount claimed by the director in the  
2 notice together with costs. In the event that a notice to withhold and  
3 deliver is served upon an employer and the property found to be subject  
4 thereto is wages, the employer may assert in the answer to all  
5 exemptions provided for by chapter 6.27 RCW to which the wage earner  
6 may be entitled.

7 **Sec. 6.** RCW 51.32.073 and 1989 c 385 s 4 are each amended to read  
8 as follows:

9 (1) Except as provided in subsection (2) of this section, each  
10 employer (~~shall~~) may retain from the earnings of each worker one-half  
11 of that amount as shall be fixed from time to time by the director, the  
12 basis for measuring said amount to be determined by the director.  
13 (~~The money so retained shall be matched in an equal amount by each~~  
14 ~~employer, and all such moneys~~) All moneys retained from workers and  
15 the remaining amount owed by employers shall be remitted to the  
16 department in such manner and at such intervals as the department  
17 directs and shall be placed in the supplemental pension fund:  
18 PROVIDED, That the state apprenticeship council shall pay the entire  
19 amount into the supplemental pension fund for registered apprentices or  
20 trainees during their participation in supplemental and related  
21 instruction classes. The moneys so collected shall be used exclusively  
22 for the additional payments from the supplemental pension fund  
23 prescribed in this title and for the amount of any increase payable  
24 under the provisions of RCW 51.32.075, as now or hereafter amended, and  
25 shall be no more than necessary to make such payments on a current  
26 basis. The department may require a self-insurer to make any  
27 additional payments which are payable from the supplemental pension  
28 fund and thereafter such self-insurer shall be reimbursed therefrom.

29 (2) None of the amount assessed for the supplemental pension fund  
30 under RCW 51.16.210 may be retained from the earnings of workers  
31 covered under RCW 51.16.210.

32 **Sec. 7.** RCW 51.32.240 and 2008 c 280 s 2 are each amended to read  
33 as follows:

34 (1)(a) Whenever any payment of benefits under this title is made  
35 because of clerical error, mistake of identity, innocent  
36 misrepresentation by or on behalf of the recipient thereof mistakenly

1 acted upon, or any other circumstance of a similar nature, all not  
2 induced by willful misrepresentation, the recipient thereof shall repay  
3 it and recoupment may be made from any future payments due to the  
4 recipient on any claim with the state fund or self-insurer, as the case  
5 may be. The department or self-insurer, as the case may be, must make  
6 claim for such repayment or recoupment within one year of the making of  
7 any such payment or it will be deemed any claim therefor has been  
8 waived.

9 (b) Except as provided in subsections (3), (4), and (5) of this  
10 section, the department may only assess an overpayment of benefits  
11 because of adjudicator error when the order upon which the overpayment  
12 is based is not yet final as provided in RCW 51.52.050 and 51.52.060.  
13 "Adjudicator error" includes the failure to consider information in the  
14 claim file, failure to secure adequate information, or an error in  
15 judgment.

16 (c) The director, pursuant to rules adopted in accordance with the  
17 procedures provided in the administrative procedure act, chapter 34.05  
18 RCW, may exercise his or her discretion to waive, in whole or in part,  
19 the amount of any such timely claim where the recovery would be against  
20 equity and good conscience.

21 (2) Whenever the department or self-insurer fails to pay benefits  
22 because of clerical error, mistake of identity, or innocent  
23 misrepresentation, all not induced by recipient willful  
24 misrepresentation, the recipient may request an adjustment of benefits  
25 to be paid from the state fund or by the self-insurer, as the case may  
26 be, subject to the following:

27 (a) The recipient must request an adjustment in benefits within one  
28 year from the date of the incorrect payment or it will be deemed any  
29 claim therefore has been waived.

30 (b) The recipient may not seek an adjustment of benefits because of  
31 adjudicator error. Adjustments due to adjudicator error are addressed  
32 by the filing of a written request for reconsideration with the  
33 department of labor and industries or an appeal with the board of  
34 industrial insurance appeals within sixty days from the date the order  
35 is communicated as provided in RCW 51.52.050. "Adjudicator error"  
36 includes the failure to consider information in the claim file, failure  
37 to secure adequate information, or an error in judgment.

1 (3) Whenever the department issues an order rejecting a claim for  
2 benefits paid pursuant to RCW 51.32.190 or 51.32.210, after payment for  
3 temporary disability benefits has been paid by a self-insurer pursuant  
4 to RCW 51.32.190(3) or by the department pursuant to RCW 51.32.210, the  
5 recipient thereof shall repay such benefits and recoupment may be made  
6 from any future payments due to the recipient on any claim with the  
7 state fund or self-insurer, as the case may be. The director, under  
8 rules adopted in accordance with the procedures provided in the  
9 administrative procedure act, chapter 34.05 RCW, may exercise  
10 discretion to waive, in whole or in part, the amount of any such  
11 payments where the recovery would be against equity and good  
12 conscience.

13 (4) Whenever any payment of benefits under this title has been made  
14 pursuant to an adjudication by the department or by order of the board  
15 or any court and timely appeal therefrom has been made where the final  
16 decision is that any such payment was made pursuant to an erroneous  
17 adjudication, the recipient thereof shall repay it and recoupment may  
18 be made from any future payments due to the recipient on any claim  
19 whether state fund or self-insured.

20 (a) The director, pursuant to rules adopted in accordance with the  
21 procedures provided in the administrative procedure act, chapter 34.05  
22 RCW, may exercise discretion to waive, in whole or in part, the amount  
23 of any such payments where the recovery would be against equity and  
24 good conscience. However, if the director waives in whole or in part  
25 any such payments due a self-insurer, the self-insurer shall be  
26 reimbursed the amount waived from the self-insured employer overpayment  
27 reimbursement fund.

28 (b) The department shall collect information regarding self-insured  
29 claim overpayments resulting from final decisions of the board and the  
30 courts, and recoup such overpayments on behalf of the self-insurer from  
31 any open, new, or reopened state fund or self-insured claims. The  
32 department shall forward the amounts collected to the self-insurer to  
33 whom the payment is owed. The department may provide information as  
34 needed to any self-insurers from whom payments may be collected on  
35 behalf of the department or another self-insurer. Notwithstanding RCW  
36 51.32.040, any self-insurer requested by the department to forward  
37 payments to the department pursuant to this subsection shall pay the

1 department directly. The department shall credit the amounts recovered  
2 to the appropriate fund, or forward amounts collected to the  
3 appropriate self-insurer, as the case may be.

4 (c) If a self-insurer is not fully reimbursed within twenty-four  
5 months of the first attempt at recovery through the collection process  
6 pursuant to this subsection and by means of processes pursuant to  
7 subsection (6) of this section, the self-insurer shall be reimbursed  
8 for the remainder of the amount due from the self-insured employer  
9 overpayment reimbursement fund.

10 (d) For purposes of this subsection, "recipient" does not include  
11 health service providers whose treatment or services were authorized by  
12 the department or self-insurer.

13 (e) The department or self-insurer shall first attempt recovery of  
14 overpayments for health services from any entity that provided health  
15 insurance to the worker to the extent that the health insurance entity  
16 would have provided health insurance benefits but for workers'  
17 compensation coverage.

18 (5)(a) Whenever any payment of benefits under this title has been  
19 induced by willful misrepresentation the recipient thereof shall repay  
20 any such payment together with a penalty of fifty percent of the total  
21 of any such payments and the amount of such total sum may be recouped  
22 from any future payments due to the recipient on any claim with the  
23 state fund or self-insurer against whom the willful misrepresentation  
24 was committed, as the case may be, and the amount of such penalty shall  
25 be placed in the supplemental pension fund. Such repayment or  
26 recoupment must be demanded or ordered within three years of the  
27 discovery of the willful misrepresentation.

28 (b) For purposes of this subsection (5), it is willful  
29 misrepresentation for a person to obtain payments or other benefits  
30 under this title in an amount greater than that to which the person  
31 otherwise would be entitled. Willful misrepresentation includes:

32 (i) Willful false statement; or

33 (ii) Willful misrepresentation, omission, or concealment of any  
34 material fact.

35 (c) For purposes of this subsection (5), "willful" means a  
36 conscious or deliberate false statement, misrepresentation, omission,  
37 or concealment of a material fact with the specific intent of  
38 obtaining, continuing, or increasing benefits under this title.

1 (d) For purposes of this subsection (5), failure to disclose a  
2 work-type activity must be willful in order for a misrepresentation to  
3 have occurred.

4 (e) For purposes of this subsection (5), a material fact is one  
5 which would result in additional, increased, or continued benefits,  
6 including but not limited to facts about physical restrictions, or  
7 work-type activities which either result in wages or income or would be  
8 reasonably expected to do so. Wages or income include the receipt of  
9 any goods or services. For a work-type activity to be reasonably  
10 expected to result in wages or income, a pattern of repeated activity  
11 must exist. For those activities that would reasonably be expected to  
12 result in wages or produce income, but for which actual wage or income  
13 information cannot be reasonably determined, the department shall  
14 impute wages pursuant to RCW 51.08.178(4).

15 (6) The worker, beneficiary, or other person affected thereby shall  
16 have the right to contest an order assessing an overpayment pursuant to  
17 this section in the same manner and to the same extent as provided  
18 under RCW 51.52.050 and 51.52.060. In the event such an order becomes  
19 final under chapter 51.52 RCW and notwithstanding the provisions of  
20 subsections (1) through (5) of this section, the director, director's  
21 designee, or self-insurer may file with the clerk in any county within  
22 the state a warrant in the amount of the sum representing the unpaid  
23 overpayment and/or penalty plus interest accruing from the date the  
24 order became final. The clerk of the county in which the warrant is  
25 filed shall immediately designate a superior court cause number for  
26 such warrant and the clerk shall cause to be entered in the judgment  
27 docket under the superior court cause number assigned to the warrant,  
28 the name of the worker, beneficiary, or other person mentioned in the  
29 warrant, the amount of the unpaid overpayment and/or penalty plus  
30 interest accrued, and the date the warrant was filed. The amount of  
31 the warrant as docketed shall become a lien upon the title to and  
32 interest in all real and personal property of the worker, beneficiary,  
33 or other person against whom the warrant is issued, the same as a  
34 judgment in a civil case docketed in the office of such clerk. The  
35 sheriff shall then proceed in the same manner and with like effect as  
36 prescribed by law with respect to execution or other process issued  
37 against rights or property upon judgment in the superior court. Such  
38 warrant so docketed shall be sufficient to support the issuance of

1 writs of garnishment in favor of the department or self-insurer in the  
2 manner provided by law in the case of judgment, wholly or partially  
3 unsatisfied. The clerk of the court shall be entitled to a filing fee  
4 under RCW 36.18.012(10), which shall be added to the amount of the  
5 warrant. A copy of such warrant shall be mailed to the worker,  
6 beneficiary, or other person within three days of filing with the  
7 clerk.

8 The director, director's designee, or self-insurer may issue to any  
9 person, firm, corporation, municipal corporation, political subdivision  
10 of the state, public corporation, or agency of the state, a notice to  
11 withhold and deliver property of any kind if there is reason to believe  
12 that there is in the possession of such person, firm, corporation,  
13 municipal corporation, political subdivision of the state, public  
14 corporation, or agency of the state, property that is due, owing, or  
15 belonging to any worker, beneficiary, or other person upon whom a  
16 warrant has been served for payments due the department or self-  
17 insurer. The notice and order to withhold and deliver shall be served  
18 by (~~certified mail~~) a method for which receipt can be confirmed or  
19 tracked accompanied by an affidavit of service by mailing or served by  
20 the sheriff of the county, or by the sheriff's deputy, or by any  
21 authorized representative of the director, director's designee, or  
22 self-insurer. Any person, firm, corporation, municipal corporation,  
23 political subdivision of the state, public corporation, or agency of  
24 the state upon whom service has been made shall answer the notice  
25 within twenty days exclusive of the day of service, under oath and in  
26 writing, and shall make true answers to the matters inquired or in the  
27 notice and order to withhold and deliver. In the event there is in the  
28 possession of the party named and served with such notice and order,  
29 any property that may be subject to the claim of the department or  
30 self-insurer, such property shall be delivered forthwith to the  
31 director, the director's authorized representative, or self-insurer  
32 upon demand. If the party served and named in the notice and order  
33 fails to answer the notice and order within the time prescribed in this  
34 section, the court may, after the time to answer such order has  
35 expired, render judgment by default against the party named in the  
36 notice for the full amount, plus costs, claimed by the director,  
37 director's designee, or self-insurer in the notice. In the event that  
38 a notice to withhold and deliver is served upon an employer and the

1 property found to be subject thereto is wages, the employer may assert  
2 in the answer all exemptions provided for by chapter 6.27 RCW to which  
3 the wage earner may be entitled.

4 This subsection shall only apply to orders assessing an overpayment  
5 which are issued on or after July 28, 1991: PROVIDED, That this  
6 subsection shall apply retroactively to all orders assessing an  
7 overpayment resulting from fraud, civil or criminal.

8 (7) Orders assessing an overpayment which are issued on or after  
9 July 28, 1991, shall include a conspicuous notice of the collection  
10 methods available to the department or self-insurer.

11 **Sec. 8.** RCW 51.48.120 and 1995 c 160 s 5 are each amended to read  
12 as follows:

13 If any employer should default in any payment due to the state fund  
14 the director or the director's designee may issue a notice of  
15 assessment certifying the amount due, which notice shall be served upon  
16 the employer by mailing such notice to the employer by (~~certified~~  
17 ~~mail~~) a method for which receipt can be confirmed or tracked to the  
18 employer's last known address or served in the manner prescribed for  
19 the service of a summons in a civil action. Such notice shall contain  
20 the information that an appeal must be filed with the board of  
21 industrial insurance appeals and the director by mail or personally  
22 within thirty days of the date of service of the notice of assessment  
23 in order to appeal the assessment unless a written request for  
24 reconsideration is filed with the department of labor and industries.

25 **Sec. 9.** RCW 51.48.150 and 1995 c 160 s 6 are each amended to read  
26 as follows:

27 The director or the director's designee is hereby authorized to  
28 issue to any person, firm, corporation, municipal corporation,  
29 political subdivision of the state, a public corporation, or any agency  
30 of the state, a notice and order to withhold and deliver property of  
31 any kind whatsoever when he or she has reason to believe that there is  
32 in the possession of such person, firm, corporation, municipal  
33 corporation, political subdivision of the state, public corporation, or  
34 any agency of the state, property which is or shall become due, owing,  
35 or belonging to any employer upon whom a notice of assessment has been  
36 served by the department for payments due to the state fund. The

1 effect of a notice and order to withhold and deliver shall be  
2 continuous from the date such notice and order to withhold and deliver  
3 is first made until the liability out of which such notice and order to  
4 withhold and deliver arose is satisfied or becomes unenforceable  
5 because of lapse of time. The department shall release the notice and  
6 order to withhold and deliver when the liability out of which the  
7 notice and order to withhold and deliver arose is satisfied or becomes  
8 unenforceable by reason of lapse of time and shall notify the person  
9 against whom the notice and order to withhold and deliver was made that  
10 such notice and order to withhold and deliver has been released.

11 The notice and order to withhold and deliver shall be served by the  
12 sheriff of the county or by the sheriff's deputy, by ~~((certified mail,~~  
13 ~~return receipt requested))~~ a method for which receipt can be confirmed  
14 or tracked, or by any duly authorized representatives of the director.  
15 Any person, firm, corporation, municipal corporation, political  
16 subdivision of the state, public corporation or any agency of the state  
17 upon whom service has been made is hereby required to answer the notice  
18 within twenty days exclusive of the day of service, under oath and in  
19 writing, and shall make true answers to the matters inquired of in the  
20 notice and order to withhold and deliver. In the event there is in the  
21 possession of the party named and served with a notice and order to  
22 withhold and deliver, any property which may be subject to the claim of  
23 the department, such property shall be delivered forthwith to the  
24 director or the director's duly authorized representative upon service  
25 of the notice to withhold and deliver which will be held in trust by  
26 the director for application on the employer's indebtedness to the  
27 department, or for return without interest, in accordance with a final  
28 determination of a petition for review, or in the alternative such  
29 party shall furnish a good and sufficient surety bond satisfactory to  
30 the director conditioned upon final determination of liability. Should  
31 any party served and named in the notice to withhold and deliver fail  
32 to make answer to such notice and order to withhold and deliver, within  
33 the time prescribed herein, it shall be lawful for the court, after the  
34 time to answer such order has expired, to render judgment by default  
35 against the party named in the notice to withhold and deliver for the  
36 full amount claimed by the director in the notice to withhold and  
37 deliver together with costs. In the event that a notice to withhold  
38 and deliver is served upon an employer and the property found to be



1 subject thereto is wages, then the employer shall be entitled to assert  
2 in the answer to all exemptions provided for by chapter 6.27 RCW to  
3 which the wage earner may be entitled.

4 **Sec. 10.** RCW 51.52.050 and 2008 c 280 s 1 are each amended to read  
5 as follows:

6 (1) Whenever the department has made any order, decision, or award,  
7 it shall promptly serve the worker, beneficiary, employer, or other  
8 person affected thereby, with a copy thereof by mail, (~~which shall be~~  
9 ~~addressed to such person at his or her last known address as shown by~~  
10 ~~the records of the department~~) or if the worker, beneficiary,  
11 employer, or other person affected thereby chooses, the department may  
12 send correspondence and other legal notices by secure electronic means.  
13 Correspondence and notices must be addressed to such a person at his or  
14 her last known postal or electronic address as shown by the records of  
15 the department. Correspondence and notices sent electronically are  
16 considered received on the date sent by the department. The copy, in  
17 case the same is a final order, decision, or award, shall bear on the  
18 same side of the same page on which is found the amount of the award,  
19 a statement, set in black faced type of at least ten point body or  
20 size, that such final order, decision, or award shall become final  
21 within sixty days from the date the order is communicated to the  
22 parties unless a written request for reconsideration is filed with the  
23 department of labor and industries, Olympia, or an appeal is filed with  
24 the board of industrial insurance appeals, Olympia. However, a  
25 department order or decision making demand, whether with or without  
26 penalty, for repayment of sums paid to a provider of medical, dental,  
27 vocational, or other health services rendered to an industrially  
28 injured worker, shall state that such order or decision shall become  
29 final within twenty days from the date the order or decision is  
30 communicated to the parties unless a written request for  
31 reconsideration is filed with the department of labor and industries,  
32 Olympia, or an appeal is filed with the board of industrial insurance  
33 appeals, Olympia.

34 (2)(a) Whenever the department has taken any action or made any  
35 decision relating to any phase of the administration of this title the  
36 worker, beneficiary, employer, or other person aggrieved thereby may  
37 request reconsideration of the department, or may appeal to the board.

1 In an appeal before the board, the appellant shall have the burden of  
2 proceeding with the evidence to establish a prima facie case for the  
3 relief sought in such appeal.

4 (b) An order by the department awarding benefits shall become  
5 effective and benefits due on the date issued. Subject to (b)(i) and  
6 (ii) of this subsection, if the department order is appealed the order  
7 shall not be stayed pending a final decision on the merits unless  
8 ordered by the board. Upon issuance of the order granting the appeal,  
9 the board will provide the worker with notice concerning the potential  
10 of an overpayment of benefits paid pending the outcome of the appeal  
11 and the requirements for interest on unpaid benefits pursuant to RCW  
12 51.52.135. A worker may request that benefits cease pending appeal at  
13 any time following the employer's motion for stay or the board's order  
14 granting appeal. The request must be submitted in writing to the  
15 employer, the board, and the department. Any employer may move for a  
16 stay of the order on appeal, in whole or in part. The motion must be  
17 filed within fifteen days of the order granting appeal. The board  
18 shall conduct an expedited review of the claim file provided by the  
19 department as it existed on the date of the department order. The  
20 board shall issue a final decision within twenty-five days of the  
21 filing of the motion for stay or the order granting appeal, whichever  
22 is later. The board's final decision may be appealed to superior court  
23 in accordance with RCW 51.52.110. The board shall grant a motion to  
24 stay if the moving party demonstrates that it is more likely than not  
25 to prevail on the facts as they existed at the time of the order on  
26 appeal. The board shall not consider the likelihood of recoupment of  
27 benefits as a basis to grant or deny a motion to stay. If a  
28 self-insured employer prevails on the merits, any benefits paid may be  
29 recouped pursuant to RCW 51.32.240.

30 (i) If upon reconsideration requested by a worker or medical  
31 provider, the department has ordered an increase in a permanent partial  
32 disability award from the amount reflected in an earlier order, the  
33 award reflected in the earlier order shall not be stayed pending a  
34 final decision on the merits. However, the increase is stayed without  
35 further action by the board pending a final decision on the merits.

36 (ii) If any party appeals an order establishing a worker's wages or  
37 the compensation rate at which a worker will be paid temporary or

1 permanent total disability or loss of earning power benefits, the  
2 worker shall receive payment pending a final decision on the merits  
3 based on the following:

4 (A) When the employer is self-insured, the wage calculation or  
5 compensation rate the employer most recently submitted to the  
6 department; or

7 (B) When the employer is insured through the state fund, the  
8 highest wage amount or compensation rate uncontested by the parties.

9 Payment of benefits or consideration of wages at a rate that is  
10 higher than that specified in (b)(ii)(A) or (B) of this subsection is  
11 stayed without further action by the board pending a final decision on  
12 the merits.

13 (c) In an appeal from an order of the department that alleges  
14 willful misrepresentation, the department or self-insured employer  
15 shall initially introduce all evidence in its case in chief. Any such  
16 person aggrieved by the decision and order of the board may thereafter  
17 appeal to the superior court, as prescribed in this chapter.

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