

CERTIFICATION OF ENROLLMENT

**HOUSE BILL 1206**

Chapter 88, Laws of 1991

52nd Legislature  
1991 Regular Session

WORKERS' COMPENSATION--RECOVERY OF OVERPAYMENTS

EFFECTIVE DATE: 7/28/91

Passed by the House February 15, 1991  
Yeas 96 Nays 0

JOE KING  
**Speaker of the  
House of Representatives**

Passed by the Senate April 11, 1991  
Yeas 46 Nays 0

JOEL PRITCHARD  
**President of the Senate**

Approved May 9, 1991

BOOTH GARDNER  
**Governor of the State of Washington**

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1206** as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON  
**Chief Clerk**

FILED

May 9, 1991 - 11:20 a.m.

Secretary of State  
State of Washington



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HOUSE BILL 1206

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AS AMENDED BY THE SENATE

Passed Legislature - 1991 Regular Session

State of Washington                      52nd Legislature                      1991 Regular Session

By Representatives Jones, Fuhrman, R. King and Winsley; by request of Department of Labor & Industries.

Read first time January 23, 1991. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to industrial insurance payments; amending RCW  
2 51.32.240, 51.32.050, 51.12.100, and 51.16.110; and repealing RCW  
3 51.16.115.

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

5            **Sec. 1.** RCW 51.32.240 and 1986 c 54 s 1 are each amended to read  
6 as follows:

7            (1) Whenever any payment of benefits under this title is made  
8 because of clerical error, mistake of identity, innocent  
9 misrepresentation by or on behalf of the recipient thereof mistakenly  
10 acted upon, or any other circumstance of a similar nature, all not  
11 induced by fraud, the recipient thereof shall repay it and recoupment  
12 may be made from any future payments due to the recipient on any claim  
13 with the state fund or self-insurer, as the case may be. The  
14 department or self-insurer, as the case may be, must make claim for  
15 such repayment or recoupment within one year of the making of any such

1 payment or it will be deemed any claim therefor has been waived. The  
2 director, pursuant to rules adopted in accordance with the procedures  
3 provided in the administrative procedure act, chapter 34.05 RCW, may  
4 exercise his discretion to waive, in whole or in part, the amount of  
5 any such timely claim where the recovery would be against equity and  
6 good conscience.

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

19 (3) Whenever any payment of benefits under this title has been made  
20 pursuant to an adjudication by the department or by order of the board  
21 or any court and timely appeal therefrom has been made where the final  
22 decision is that any such payment was made pursuant to an erroneous  
23 adjudication, the recipient thereof shall repay it and recoupment may  
24 be made from any future payments due to the recipient on any claim with  
25 the state fund or self-insurer, as the case may be. The director,  
26 pursuant to rules adopted in accordance with the procedures provided in  
27 the administrative procedure act, chapter 34.05 RCW, may exercise his  
28 discretion to waive, in whole or in part, the amount of any such  
29 payments where the recovery would be against equity and good  
30 conscience.

1 (4) Whenever any payment of benefits under this title has been  
2 induced by fraud the recipient thereof shall repay any such payment  
3 together with a penalty of fifty percent of the total of any such  
4 payments and the amount of such total sum may be recouped from any  
5 future payments due to the recipient on any claim with the state fund  
6 or self-insurer against whom the fraud was committed, as the case may  
7 be, and the amount of such penalty shall be placed in the supplemental  
8 pension fund. Such repayment or recoupment must be demanded or ordered  
9 within one year of the discovery of the fraud.

10 (5) The worker, beneficiary, or other person affected thereby shall  
11 have the right to contest an order assessing an overpayment pursuant to  
12 this section in the same manner and to the same extent as provided  
13 under RCW 51.52.050 and 51.52.060. In the event such an order becomes  
14 final under chapter 51.52 RCW and notwithstanding the provisions of  
15 subsections (1) through (4) of this section, the director, director's  
16 designee, or self-insurer may file with the clerk in any county within  
17 the state a warrant in the amount of the sum representing the unpaid  
18 overpayment and/or penalty plus interest accruing from the date the  
19 order became final. The clerk of the county in which the warrant is  
20 filed shall immediately designate a superior court cause number for  
21 such warrant and the clerk shall cause to be entered in the judgment  
22 docket under the superior court cause number assigned to the warrant,  
23 the name of the worker, beneficiary, or other person mentioned in the  
24 warrant, the amount of the unpaid overpayment and/or penalty plus  
25 interest accrued, and the date the warrant was filed. The amount of  
26 the warrant as docketed shall become a lien upon the title to and  
27 interest in all real and personal property of the worker, beneficiary,  
28 or other person against whom the warrant is issued, the same as a  
29 judgment in a civil case docketed in the office of such clerk. The  
30 sheriff shall then proceed in the same manner and with like effect as

1 prescribed by law with respect to execution or other process issued  
2 against rights or property upon judgment in the superior court. Such  
3 warrant so docketed shall be sufficient to support the issuance of  
4 writs of garnishment in favor of the department or self-insurer in the  
5 manner provided by law in the case of judgment, wholly or partially  
6 unsatisfied. The clerk of the court shall be entitled to a filing fee  
7 of five dollars, which shall be added to the amount of the warrant. A  
8 copy of such warrant shall be mailed to the worker, beneficiary, or  
9 other person within three days of filing with the clerk.

10 The director, director's designee, or self-insurer may issue to any  
11 person, firm, corporation, municipal corporation, political subdivision  
12 of the state, public corporation, or agency of the state, a notice to  
13 withhold and deliver property of any kind if there is reason to believe  
14 that there is in the possession of such person, firm, corporation,  
15 municipal corporation, political subdivision of the state, public  
16 corporation, or agency of the state, property that is due, owing, or  
17 belonging to any worker, beneficiary, or other person upon whom a  
18 warrant has been served for payments due the department or self-  
19 insurer. The notice and order to withhold and deliver shall be served  
20 by certified mail accompanied by an affidavit of service by mailing or  
21 served by the sheriff of the county, or by the sheriff's deputy, or by  
22 any authorized representative of the director, director's designee, or  
23 self-insurer. Any person, firm, corporation, municipal corporation,  
24 political subdivision of the state, public corporation, or agency of  
25 the state upon whom service has been made shall answer the notice  
26 within twenty days exclusive of the day of service, under oath and in  
27 writing, and shall make true answers to the matters inquired or in the  
28 notice and order to withhold and deliver. In the event there is in the  
29 possession of the party named and served with such notice and order,  
30 any property that may be subject to the claim of the department or

1 self-insurer, such property shall be delivered forthwith to the  
2 director, the director's authorized representative, or self-insurer  
3 upon demand. If the party served and named in the notice and order  
4 fails to answer the notice and order within the time prescribed in this  
5 section, the court may, after the time to answer such order has  
6 expired, render judgment by default against the party named in the  
7 notice for the full amount, plus costs, claimed by the director,  
8 director's designee, or self-insurer in the notice. In the event that  
9 a notice to withhold and deliver is served upon an employer and the  
10 property found to be subject thereto is wages, the employer may assert  
11 in the answer all exemptions provided for by chapter 6.27 RCW to which  
12 the wage earner may be entitled.

13 This subsection shall only apply to orders assessing an overpayment  
14 which are issued on or after the effective date of this act: PROVIDED,  
15 That this subsection shall apply retroactively to all orders assessing  
16 an overpayment resulting from fraud, civil or criminal.

17 (6) Orders assessing an overpayment which are issued on or after  
18 the effective date of this act shall include a conspicuous notice of  
19 the collection methods available to the department or self-insurer.

20 **Sec. 2.** RCW 51.32.050 and 1988 c 161 s 2 are each amended to read  
21 as follows:

22 (1) Where death results from the injury the expenses of burial not  
23 to exceed two thousand dollars shall be paid.

24 (2) (a) Where death results from the injury, a surviving spouse of  
25 a deceased worker eligible for benefits under this title shall receive  
26 monthly for life or until remarriage payments according to the  
27 following schedule:

1 (i) If there are no children of the deceased worker, sixty percent  
2 of the wages of the deceased worker but not less than one hundred  
3 eighty-five dollars;

4 (ii) If there is one child of the deceased worker and in the legal  
5 custody of such spouse, sixty-two percent of the wages of the deceased  
6 worker but not less than two hundred twenty-two dollars;

7 (iii) If there are two children of the deceased worker and in the  
8 legal custody of such spouse, sixty-four percent of the wages of the  
9 deceased worker but not less than two hundred fifty-three dollars;

10 (iv) If there are three children of the deceased worker and in the  
11 legal custody of such spouse, sixty-six percent of the wages of the  
12 deceased worker but not less than two hundred seventy-six dollars;

13 (v) If there are four children of the deceased worker and in the  
14 legal custody of such spouse, sixty-eight percent of the wages of the  
15 deceased worker but not less than two hundred ninety-nine dollars; or

16 (vi) If there are five or more children of the deceased worker and  
17 in the legal custody of such spouse, seventy percent of the wages of  
18 the deceased worker but not less than three hundred twenty-two dollars.

19 (b) Where the surviving spouse does not have legal custody of any  
20 child or children of the deceased worker or where after the death of  
21 the worker legal custody of such child or children passes from such  
22 surviving spouse to another, any payment on account of such child or  
23 children not in the legal custody of the surviving spouse shall be made  
24 to the person or persons having legal custody of such child or  
25 children. The amount of such payments shall be five percent of the  
26 monthly benefits payable as a result of the worker's death for each  
27 such child but such payments shall not exceed twenty-five percent.  
28 Such payments on account of such child or children shall be subtracted  
29 from the amount to which such surviving spouse would have been entitled  
30 had such surviving spouse had legal custody of all of the children and



1 the surviving spouse shall receive the remainder after such payments on  
2 account of such child or children have been subtracted. Such payments  
3 on account of a child or children not in the legal custody of such  
4 surviving spouse shall be apportioned equally among such children.

5 (c) Payments to the surviving spouse of the deceased worker shall  
6 cease at the end of the month in which remarriage occurs: PROVIDED,  
7 That a monthly payment shall be made to the child or children of the  
8 deceased worker from the month following such remarriage in a sum equal  
9 to five percent of the wages of the deceased worker for one child and  
10 a sum equal to five percent for each additional child up to a maximum  
11 of five such children. Payments to such child or children shall be  
12 apportioned equally among such children. Such sum shall be in place of  
13 any payments theretofore made for the benefit of or on account of any  
14 such child or children. If the surviving spouse does not have legal  
15 custody of any child or children of the deceased worker, or if after  
16 the death of the worker, legal custody of such child or children passes  
17 from such surviving spouse to another, any payment on account of such  
18 child or children not in the legal custody of the surviving spouse  
19 shall be made to the person or persons having legal custody of such  
20 child or children.

21 (d) In no event shall the monthly payments provided in subsection  
22 (2) of this section exceed one hundred percent of the average monthly  
23 wage in the state as computed under RCW 51.08.018.

24 (e) In addition to the monthly payments provided for in (2)(a)  
25 through (2)(c) of this section, a surviving spouse or child or children  
26 of such worker if there is no surviving spouse, or dependent parent or  
27 parents, if there is no surviving spouse or child or children of any  
28 such deceased worker shall be forthwith paid the sum of one thousand  
29 six hundred dollars, any such children, or parents to share and share  
30 alike in said sum.

1 (f) Upon remarriage of a surviving spouse the monthly payments for  
2 the child or children shall continue as provided in this section, but  
3 the monthly payments to such surviving spouse shall cease at the end of  
4 the month during which remarriage occurs. However, after September 8,  
5 1975, an otherwise eligible surviving spouse of a worker who died at  
6 any time prior to or after September 8, 1975, shall have an option of:

7 (i) Receiving, once and for all, a lump sum of (~~seventy-five~~  
8 ~~hundred dollars~~) twenty-four times the monthly compensation rate in  
9 effect on the date of remarriage allocable to the spouse for himself or  
10 herself pursuant to (2)(a)(i) of this section and subject to any  
11 modifications specified under (2)(d) of this section and RCW  
12 51.32.075(3) or fifty percent of the then remaining annuity value of  
13 his or her pension, whichever is the lesser: PROVIDED, That if the  
14 injury occurred prior to (~~July 1, 1971~~) the effective date of this  
15 section, the remarriage benefit lump sum available shall be as provided  
16 in the remarriage benefit schedules then in effect; or

17 (ii) If a surviving spouse does not choose the option specified in  
18 (2)(f)(i) of this section to accept the lump sum payment, the  
19 remarriage of the surviving spouse of a worker shall not bar him or her  
20 from claiming the lump sum payment authorized in (2)(f)(i) of this  
21 section during the life of the remarriage, or shall not prevent  
22 subsequent monthly payments to him or to her if the remarriage has been  
23 terminated by death or has been dissolved or annulled by valid court  
24 decree provided he or she has not previously accepted the lump sum  
25 payment.

26 (g) If the surviving spouse during the remarriage should die  
27 without having previously received the lump sum payment provided in  
28 (2)(f)(i) of this section, his or her estate shall be entitled to  
29 receive the sum (~~of seventy-five hundred dollars~~) specified under

1 subsection (2)(f)(i) of this section or fifty percent of the then  
2 remaining annuity value of his or her pension whichever is the lesser.

3 (h) The effective date of resumption of payments under (2)(f)(ii)  
4 of this section to a surviving spouse based upon termination of a  
5 remarriage by death, annulment, or dissolution shall be the date of the  
6 death or the date the judicial decree of annulment or dissolution  
7 becomes final and when application for the payments has been received.

8 (i) If it should be necessary to increase the reserves in the  
9 reserve fund or to create a new pension reserve fund as a result of the  
10 amendments in chapter 45, Laws of 1975-'76 2nd ex. sess., the amount of  
11 such increase in pension reserve in any such case shall be transferred  
12 to the reserve fund from the supplemental pension fund.

13 (3) If there is a child or children and no surviving spouse of the  
14 deceased worker or the surviving spouse is not eligible for benefits  
15 under this title, a sum equal to thirty-five percent of the wages of  
16 the deceased worker shall be paid monthly for one child and a sum  
17 equivalent to fifteen percent of such wage shall be paid monthly for  
18 each additional child, the total of such sum to be divided among such  
19 children, share and share alike: PROVIDED, That benefits under this  
20 subsection or subsection (4) shall not exceed sixty-five percent of the  
21 wages of the deceased worker at the time of his or her death or one  
22 hundred percent of the average monthly wage in the state as defined in  
23 RCW 51.08.018, whichever is the lesser of the two sums.

24 (4) In the event a surviving spouse receiving monthly payments  
25 dies, the child or children of the deceased worker shall receive the  
26 same payment as provided in subsection (3) of this section.

27 (5) If the worker leaves no surviving spouse or child, but leaves  
28 a dependent or dependents, a monthly payment shall be made to each  
29 dependent equal to fifty percent of the average monthly support  
30 actually received by such dependent from the worker during the twelve

1 months next preceding the occurrence of the injury, but the total  
2 payment to all dependents in any case shall not exceed sixty-five  
3 percent of the wages of the deceased worker at the time of the death or  
4 one hundred percent of the average monthly wage in the state as defined  
5 in RCW 51.08.018, whichever is the lesser of the two sums. If any  
6 dependent is under the age of eighteen years at the time of the  
7 occurrence of the injury, the payment to such dependent shall cease  
8 when such dependent reaches the age of eighteen years except such  
9 payments shall continue until the dependent reaches age twenty-three  
10 while permanently enrolled at a full time course in an accredited  
11 school. The payment to any dependent shall cease if and when, under  
12 the same circumstances, the necessity creating the dependency would  
13 have ceased if the injury had not happened.

14 (6) For claims filed prior to July 1, 1986, if the injured worker  
15 dies during the period of permanent total disability, whatever the  
16 cause of death, leaving a surviving spouse, or child, or children, the  
17 surviving spouse or child or children shall receive benefits as if  
18 death resulted from the injury as provided in subsections (2) through  
19 (4) of this section. Upon remarriage or death of such surviving  
20 spouse, the payments to such child or children shall be made as  
21 provided in subsection (2) of this section when the surviving spouse of  
22 a deceased worker remarries.

23 (7) For claims filed on or after July 1, 1986, every worker who  
24 becomes eligible for permanent total disability benefits shall elect an  
25 option as provided in RCW 51.32.067.

26 **Sec. 3.** RCW 51.12.100 and 1988 c 271 s 2 are each amended to read  
27 as follows:

28 (1) The provisions of this title shall not apply to a master or  
29 member of a crew of any vessel, or to employers and workers for whom a

1 right or obligation exists under the maritime laws or federal  
2 employees' compensation act for personal injuries or death of such  
3 workers.

4 (2) If an accurate segregation of payrolls of workers for whom such  
5 a right or obligation exists under the maritime laws cannot be made by  
6 the employer, the director is hereby authorized and directed to fix  
7 from time to time a basis for the approximate segregation of the  
8 payrolls of employees to cover the part of their work for which no  
9 right or obligation exists under the maritime laws for injuries or  
10 death occurring in such work, and the employer, if not a self-insurer,  
11 shall pay premiums on that basis for the time such workers are engaged  
12 in their work.

13 (3) Where two or more employers are simultaneously engaged in a  
14 common enterprise at one and the same site or place in maritime  
15 occupations under circumstances in which no right or obligation exists  
16 under the maritime laws for personal injuries or death of such workers,  
17 such site or place shall be deemed for the purposes of this title to be  
18 the common plant of such employers.

19 (4) In the event payments are made under this title prior to the  
20 final determination under the maritime laws or federal employees'  
21 compensation act, such benefits shall be repaid by the worker or  
22 beneficiary if recovery is subsequently made under the maritime laws or  
23 federal employees' compensation act.

24 **Sec. 4.** RCW 51.16.110 and 1977 ex.s. c 323 s 12 are each amended  
25 to read as follows:

26 Every employer who shall enter into any business, or who shall  
27 resume operations in any work or plant after the final adjustment of  
28 his or her payroll in connection therewith, or who was formerly a self-  
29 insurer and wishes to continue his or her operations subject to this

1 title, shall, before so commencing or resuming or continuing  
2 operations, as the case may be, notify the department of such fact((  
3 ~~accompanying such notification with a cash deposit in a sum equal to~~  
4 ~~the estimated premiums for the first three full calendar months of his~~  
5 ~~or her proposed operations which shall remain on deposit subject to the~~  
6 ~~other provisions of this section.~~

7 The department may, in its discretion and in lieu of such deposit,  
8 accept a bond, in an amount which it deems sufficient, to secure  
9 payment of premiums due or to become due to the accident fund and  
10 medical aid fund. The deposit or posting of a bond shall not relieve  
11 the employer from paying premiums subsequently due.

12 Should the employer acquire sufficient assets to assure the payment  
13 of premiums due to the accident fund and the medical aid fund the  
14 department may, in its discretion, refund the deposit or cancel the  
15 bond.

16 If the employer ceases to be an employer under this title, the  
17 department shall, upon receipt of all payments due the accident fund  
18 and medical aid fund, or any other fund under this title, refund to the  
19 employer all deposits remaining to the employer's credit and shall  
20 cancel any bond given under this section)).

21 NEW SECTION. **Sec. 5.** RCW 51.16.115 and 1986 c 9 s 7 are each  
22 repealed.

Passed the House February 15, 1991.  
Passed the Senate April 11, 1991.  
Approved by the Governor May 9, 1991.  
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