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HOUSE BILL 1697

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State of Washington                      56th Legislature                      1999 Regular Session

By Representatives Wood and Conway

Read first time 02/02/1999. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to industrial insurance benefits paid during  
2 appeal; amending RCW 51.52.050, 51.16.140, and 43.79A.040; reenacting  
3 and amending RCW 51.52.060; adding a new section to chapter 51.16 RCW;  
4 adding a new section to chapter 51.44 RCW; creating a new section; and  
5 declaring an emergency.

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

7            **Sec. 1.** RCW 51.52.050 and 1987 c 151 s 1 are each amended to read  
8 as follows:

9            (1) Whenever the department has made any order, decision, or award,  
10 it shall promptly serve the worker, beneficiary, employer, or other  
11 person affected thereby, with a copy thereof by mail, which shall be  
12 addressed to such person at his or her last known address as shown by  
13 the records of the department. The copy, in case the same is a final  
14 order, decision, or award, shall bear on the same side of the same page  
15 on which is found the amount of the award, a statement, set in black  
16 faced type of at least ten point body or size, that such final order,  
17 decision, or award shall become final within sixty days from the date  
18 the order is communicated to the parties unless a written request for  
19 reconsideration is filed with the department of labor and industries,

1 Olympia, or an appeal is filed with the board of industrial insurance  
2 appeals, Olympia(~~(: PROVIDED, That)~~). However, a department order or  
3 decision making demand, whether with or without penalty, for repayment  
4 of sums paid to a provider of medical, dental, vocational, or other  
5 health services rendered to an industrially injured worker, shall state  
6 that such order or decision shall become final within twenty days from  
7 the date the order or decision is communicated to the parties unless a  
8 written request for reconsideration is filed with the department of  
9 labor and industries, Olympia, or an appeal is filed with the board of  
10 industrial insurance appeals, Olympia.

11 (2) Whenever the department has taken any action or made any  
12 decision relating to any phase of the administration of this title, the  
13 worker, beneficiary, employer, or other person aggrieved thereby may  
14 request reconsideration of the department, or may appeal to the board.  
15 If an employer requests reconsideration of a department order in favor  
16 of an injured worker, temporary total disability compensation or  
17 medical aid benefits granted to the worker by the order under  
18 reconsideration shall continue while the reconsideration is pending,  
19 subject to the requirements of RCW 51.32.240(3).

20 (3) In an appeal before the board, the appellant shall have the  
21 burden of proceeding with the evidence to establish a prima facie case  
22 for the relief sought in such appeal(~~(: PROVIDED, That)~~). However, in  
23 an appeal from an order of the department that alleges fraud, the  
24 department or self-insured employer shall initially introduce all  
25 evidence in its case in chief. (~~Any such~~) A person aggrieved by the  
26 decision and order of the board may thereafter appeal to the superior  
27 court, as prescribed in this chapter.

28 **Sec. 2.** RCW 51.52.060 and 1995 c 253 s 1 and 1995 c 199 s 7 are  
29 each reenacted and amended to read as follows:

30 (1)(a) Except as otherwise specifically provided in this section,  
31 a worker, beneficiary, employer, health services provider, or other  
32 person aggrieved by an order, decision, or award of the department  
33 must, before he or she appeals to the courts, file with the board and  
34 the director, by mail or personally, within sixty days from the day on  
35 which a copy of the order, decision, or award was communicated to such  
36 person, a notice of appeal to the board. However, a health services  
37 provider or other person aggrieved by a department order or decision  
38 making demand, whether with or without penalty, solely for repayment of

1 sums paid to a provider of medical, dental, vocational, or other health  
2 services rendered to an industrially injured worker must, before he or  
3 she appeals to the courts, file with the board and the director, by  
4 mail or personally, within twenty days from the day on which a copy of  
5 the order or decision was communicated to the health services provider  
6 upon whom the department order or decision was served, a notice of  
7 appeal to the board.

8 (b) Failure to file a notice of appeal with both the board and the  
9 department shall not be grounds for denying the appeal if the notice of  
10 appeal is filed with either the board or the department.

11 (2) Within ten days of the date on which an appeal has been granted  
12 by the board, the board shall notify the other interested parties to  
13 the appeal of the receipt of the appeal and shall forward a copy of the  
14 notice of appeal to the other interested parties. Within twenty days  
15 of the receipt of such notice of the board, the worker or the employer  
16 may file with the board a cross-appeal from the order of the department  
17 from which the original appeal was taken.

18 (3) If within the time limited for filing a notice of appeal to the  
19 board from an order, decision, or award of the department, the  
20 department directs the submission of further evidence or the  
21 investigation of any further fact, the time for filing the notice of  
22 appeal shall not commence to run until the person has been advised in  
23 writing of the final decision of the department in the matter. In the  
24 event the department directs the submission of further evidence or the  
25 investigation of any further fact, as provided in this section, the  
26 department shall render a final order, decision, or award within ninety  
27 days from the date further submission of evidence or investigation of  
28 further fact is ordered which time period may be extended by the  
29 department for good cause stated in writing to all interested parties  
30 for an additional ninety days.

31 (4) The department, either within the time limited for appeal, or  
32 within thirty days after receiving a notice of appeal, may:

33 (a) Modify, reverse, or change any order, decision, or award; or

34 (b)(i) Except as provided in (b)(ii) of this subsection, hold an  
35 order, decision, or award in abeyance for a period of ninety days which  
36 time period may be extended by the department for good cause stated in  
37 writing to all interested parties for an additional ninety days pending  
38 further investigation in light of the allegations of the notice of  
39 appeal; or

1 (ii) Hold an order, decision, or award issued under RCW 51.32.160  
2 in abeyance for a period not to exceed ninety days from the date of  
3 receipt of an application under RCW 51.32.160. The department may  
4 extend the ninety-day time period for an additional sixty days for good  
5 cause.

6 For purposes of this subsection, good cause includes delay that  
7 results from conduct of the claimant that is subject to sanction under  
8 RCW 51.32.110.

9 The board shall deny the appeal upon the issuance of an order under  
10 (b)(i) or (ii) of this subsection holding an earlier order, decision,  
11 or award in abeyance, without prejudice to the appellant's right to  
12 appeal from any subsequent determinative order issued by the  
13 department.

14 This subsection (4)(b) does not apply to applications deemed  
15 granted under RCW 51.32.160.

16 (5) An employer shall have the right to appeal an application  
17 deemed granted under RCW 51.32.160 on the same basis as any other  
18 application adjudicated pursuant to that section.

19 (6) A provision of this section shall not be deemed to change,  
20 alter, or modify the practice or procedure of the department for the  
21 payment of awards pending appeal. However, if an employer appeals to  
22 the board a department order granting temporary total disability  
23 compensation or medical aid benefits to a worker, the worker shall be  
24 entitled to the compensation or medical aid benefits while the appeal  
25 is pending before the board, subject to the requirements of RCW  
26 51.32.240(3).

27 NEW SECTION. Sec. 3. A new section is added to chapter 51.16 RCW  
28 to read as follows:

29 All employers shall pay an assessment for the benefit repayment  
30 account established in section 5 of this act. Every employer not  
31 qualifying as a self-insurer shall pay, on the schedule required for  
32 payment of premiums under RCW 51.16.060, a quarterly assessment of one-  
33 half of one percent of the premium deduction made under RCW  
34 51.16.140(1)(a)(i). Self-insurers shall pay a pro rata assessment in  
35 a manner to be determined by the director. However, no assessments may  
36 be made under this section in any calendar quarter if, on the first day  
37 of the immediately preceding calendar quarter, the amount in the  
38 benefit payment account is one hundred thousand dollars or more.

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

3       (1)(a) Except as provided in (b) of this subsection, every employer  
4 who is not a self-insurer shall deduct from the pay of each of his or  
5 her workers:

6       (i) One-half of the ((amount he or she)) premium the employer is  
7 required to pay, for medical benefits within each risk classification.  
8 Such amount shall be periodically determined by the director and  
9 reported by him or her to all employers under this title( (:—PROVIDED,  
10 That)); and

11       (ii) Except as limited by subsection (2) of this section, one-half  
12 of one percent of the premium deduction made under (a)(i) of this  
13 subsection.

14       (b) The state governmental unit shall pay the entire ((amount))  
15 premium, without deduction, into the medical aid fund for volunteers,  
16 as defined in RCW 51.12.035, and the state apprenticeship council shall  
17 pay the entire ((amount)) premium, without deduction, into the medical  
18 aid fund for registered apprentices or trainees, for the purposes of  
19 RCW 51.12.130. The deductions under this section ((is)) are not  
20 authorized for premiums assessed under RCW 51.16.210.

21       (2) The amount deducted under subsection (1)(a)(ii) of this section  
22 shall be paid by the employer along with the employer premiums and  
23 assessments required under this title. The amounts remitted shall be  
24 deposited into the benefit repayment account established under section  
25 5 of this act. However, no deduction may be made under subsection  
26 (1)(a)(ii) of this section in any calendar quarter if, on the first day  
27 of the immediately preceding calendar quarter, the amount in the  
28 benefit payment account is one hundred thousand dollars or more.

29       (3) It shall be unlawful for the employer, unless specifically  
30 authorized by this title, to deduct or obtain any part of the premium  
31 or other costs required to be by him or her paid from the wages or  
32 earnings of any of his or her workers, and the making of or attempt to  
33 make any such deduction shall be a gross misdemeanor.

34       NEW SECTION. Sec. 5. A new section is added to chapter 51.44 RCW  
35 to read as follows:

36       The benefit repayment account is created in the custody of the  
37 state treasurer. All receipts from the deductions required under RCW  
38 51.16.140(1)(a)(ii) and assessments under section 3 of this act shall

1 be deposited into the account. Transfers from the benefit repayment  
2 account to the medical aid fund or the accident fund, or payments from  
3 the account to self-insured employers, as applicable, shall be made  
4 when benefits are paid under RCW 51.52.050(2) or 51.52.060(6), the  
5 department order granting benefits is reversed or modified resulting in  
6 an overpayment of benefits to the worker, and the director has  
7 exercised his or her discretion to waive recovery of the overpayment  
8 under RCW 51.32.240(3).

9 **Sec. 6.** RCW 43.79A.040 and 1998 c 268 s 1 are each amended to read  
10 as follows:

11 (1) Money in the treasurer's trust fund may be deposited, invested,  
12 and reinvested by the state treasurer in accordance with RCW 43.84.080  
13 in the same manner and to the same extent as if the money were in the  
14 state treasury.

15 (2) All income received from investment of the treasurer's trust  
16 fund shall be set aside in an account in the treasury trust fund to be  
17 known as the investment income account.

18 (3) The investment income account may be utilized for the payment  
19 of purchased banking services on behalf of treasurer's trust funds  
20 including, but not limited to, depository, safekeeping, and  
21 disbursement functions for the state treasurer or affected state  
22 agencies. The investment income account is subject in all respects to  
23 chapter 43.88 RCW, but no appropriation is required for payments to  
24 financial institutions. Payments shall occur prior to distribution of  
25 earnings set forth in subsection (4) of this section.

26 (4)(a) Monthly, the state treasurer shall distribute the earnings  
27 credited to the investment income account to the state general fund  
28 except under (b) and (c) of this subsection.

29 (b) The following accounts and funds shall receive their  
30 proportionate share of earnings based upon each account's or fund's  
31 average daily balance for the period: The Washington advanced college  
32 tuition payment program account, the agricultural local fund, the  
33 American Indian scholarship endowment fund, the Washington  
34 international exchange scholarship endowment fund, the energy account,  
35 the fair fund, the game farm alternative account, the grain inspection  
36 revolving fund, the rural rehabilitation account, the stadium and  
37 exhibition center account, the youth athletic facility grant account,  
38 the self-insurance revolving fund, the sulfur dioxide abatement

1 account, (~~and~~) the children's trust fund, and the benefit repayment  
2 account. However, the earnings to be distributed shall first be  
3 reduced by the allocation to the state treasurer's service fund  
4 pursuant to RCW 43.08.190.

5 (c) The following accounts and funds shall receive eighty percent  
6 of their proportionate share of earnings based upon each account's or  
7 fund's average daily balance for the period: The advanced right of way  
8 revolving fund, the advanced environmental mitigation revolving  
9 account, the federal narcotics asset forfeitures account, the high  
10 occupancy vehicle account, the local rail service assistance account,  
11 and the miscellaneous transportation programs account.

12 (5) In conformance with Article II, section 37 of the state  
13 Constitution, no trust accounts or funds shall be allocated earnings  
14 without the specific affirmative directive of this section.

15 NEW SECTION. **Sec. 7.** Sections 3 and 4 of this act apply to  
16 premiums and assessments for calendar quarters beginning on or after  
17 July 1, 1999.

18 NEW SECTION. **Sec. 8.** This act is necessary for the immediate  
19 preservation of the public peace, health, or safety, or support of the  
20 state government and its existing public institutions, and takes effect  
21 immediately.

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