

CERTIFICATION OF ENROLLMENT

SENATE BILL 5399

54th Legislature
1995 Regular Session

Passed by the Senate April 17, 1995
YEAS 40 NAYS 2

President of the Senate

Passed by the House April 6, 1995
YEAS 96 NAYS 0

**Speaker of the
House of Representatives**

Approved

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5399** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

SENATE BILL 5399

AS AMENDED BY THE HOUSE

Passed Legislature - 1995 Regular Session

State of Washington 54th Legislature 1995 Regular Session

By Senators Pelz and Franklin; by request of Department of Labor & Industries

Read first time 01/23/95. Referred to Committee on Labor, Commerce & Trade.

1 AN ACT Relating to refining industrial insurance actions; and
2 amending RCW 51.12.120, 51.24.030, 51.24.050, 51.24.060, 51.24.090,
3 51.32.050, and 51.52.060.

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

5 **Sec. 1.** RCW 51.12.120 and 1977 ex.s. c 350 s 23 are each amended
6 to read as follows:

7 (1) If a worker, while working outside the territorial limits of
8 this state, suffers an injury on account of which he or she, or his or
9 her beneficiaries, would have been entitled to compensation under this
10 title had such injury occurred within this state, such worker, or his
11 or her beneficiaries, shall be entitled to compensation under this
12 title: PROVIDED, That if at the time of such injury:

13 (a) His or her employment is principally localized in this state;
14 or

15 (b) He or she is working under a contract of hire made in this
16 state for employment not principally localized in any state; or

17 (c) He or she is working under a contract of hire made in this
18 state for employment principally localized in another state whose
19 workers' compensation law is not applicable to his or her employer; or

1 (d) He or she is working under a contract of hire made in this
2 state for employment outside the United States and Canada.

3 (2) The payment or award of compensation or other recoveries,
4 including settlement proceeds, under the workers' compensation law of
5 another state, territory, province, or foreign nation to a worker or
6 his or her beneficiaries otherwise entitled on account of such injury
7 to compensation under this title shall not be a bar to a claim for
8 compensation under this title: PROVIDED, That claim under this title
9 is timely filed. If compensation is paid or awarded under this title,
10 the total amount of compensation or other recoveries, including
11 settlement proceeds, paid or awarded the worker or beneficiary under
12 such other workers' compensation law shall be credited against the
13 compensation due the worker or beneficiary under this title.

14 (3) If a worker or beneficiary is entitled to compensation under
15 this title by reason of an injury sustained in this state while in the
16 employ of an employer who is domiciled in another state and who has
17 neither opened an account with the department nor qualified as a self-
18 insurer under this title, such an employer or his or her insurance
19 carrier shall file with the director a certificate issued by the agency
20 which administers the workers' compensation law in the state of the
21 employer's domicile, certifying that such employer has secured the
22 payment of compensation under the workers' compensation law of such
23 other state and that with respect to said injury such worker or
24 beneficiary is entitled to the benefits provided under such law. In
25 such event:

26 (a) The filing of such certificate shall constitute appointment by
27 the employer or his or her insurance carrier of the director as its
28 agent for acceptance of the service of process in any proceeding
29 brought by any claimant to enforce rights under this title;

30 (b) The director shall send to such employer or his or her
31 insurance carrier, by registered or certified mail to the address shown
32 on such certificate, a true copy of any notice of claim or other
33 process served on the director by the claimant in any proceeding
34 brought to enforce rights under this title;

35 (c)(i) If such employer is a self-insurer under the workers'
36 compensation law of such other state, such employer shall, upon
37 submission of evidence or security, satisfactory to the director, of
38 his or her ability to meet his or her liability to such claimant under
39 this title, be deemed to be a qualified self-insurer under this title;

1 (ii) If such employer's liability under the workers' compensation
2 law of such other state is insured, such employer's carrier, as to such
3 claimant only, shall be deemed to be subject to this title: PROVIDED,
4 That unless its contract with said employer requires it to pay an
5 amount equivalent to the compensation benefits provided by this title,
6 the insurer's liability for compensation shall not exceed its liability
7 under the workers' compensation law of such other state;

8 (d) If the total amount for which such employer's insurer is liable
9 under (c)(ii) above is less than the total of the compensation to which
10 such claimant is entitled under this title, the director may require
11 the employer to file security satisfactory to the director to secure
12 the payment of compensation under this title; ((and))

13 (e) If such employer has neither qualified as a self-insurer nor
14 secured insurance coverage under the workers' compensation law of
15 another state, such claimant shall be paid compensation by the
16 department; and

17 (f) Any such employer shall have the same rights and obligations as
18 other employers subject to this title and where he or she has not
19 provided coverage or sufficient coverage to secure the compensation
20 provided by this title to such claimant, the director may impose a
21 penalty payable to the department of a sum not to exceed fifty percent
22 of the cost to the department of any deficiency between the
23 compensation provided by this title and that afforded such claimant by
24 such employer or his or her insurance carrier if any.

25 (4) As used in this section:

26 (a) A person's employment is principally localized in this or
27 another state when (i) his or her employer has a place of business in
28 this or such other state and he or she regularly works at or from such
29 place of business, or (ii) if clause (i) foregoing is not applicable,
30 he or she is domiciled in and spends a substantial part of his or her
31 working time in the service of his or her employer in this or such
32 other state;

33 (b) "Workers' compensation law" includes "occupational disease law"
34 for the purposes of this section.

35 (5) A worker whose duties require him or her to travel regularly in
36 the service of his or her employer in this and one or more other states
37 may agree in writing with his or her employer that his or her
38 employment is principally localized in this or another state, and,
39 unless such other state refuses jurisdiction, such agreement shall

1 govern as to any injury occurring after the effective date of the
2 agreement.

3 (6) The director shall be authorized to enter into agreements with
4 the appropriate agencies of other states and provinces of Canada which
5 administer their workers' compensation law with respect to conflicts of
6 jurisdiction and the assumption of jurisdiction in cases where the
7 contract of employment arises in one state or province and the injury
8 occurs in another, and when any such agreement has been executed and
9 promulgated as a regulation of the department under chapter 34.05 RCW,
10 it shall bind all employers and workers subject to this title and the
11 jurisdiction of this title shall be governed by this regulation.

12 **Sec. 2.** RCW 51.24.030 and 1987 c 212 s 1701 are each amended to
13 read as follows:

14 (1) If a third person, not in a worker's same employ, is or may
15 become liable to pay damages on account of a worker's injury for which
16 benefits and compensation are provided under this title, the injured
17 worker or beneficiary may elect to seek damages from the third person.

18 (2) In every action brought under this section, the plaintiff shall
19 give notice to the department or self-insurer when the action is filed.
20 The department or self-insurer may file a notice of statutory interest
21 in recovery. When such notice has been filed by the department or
22 self-insurer, the parties shall thereafter serve copies of all notices,
23 motions, pleadings, and other process on the department or self-
24 insurer. The department or self-insurer may then intervene as a party
25 in the action to protect its statutory interest in recovery.

26 (3) For the purposes of this chapter, "injury" shall include any
27 physical or mental condition, disease, ailment or loss, including
28 death, for which compensation and benefits are paid or payable under
29 this title.

30 (4) Damages recoverable by a worker or beneficiary pursuant to the
31 underinsured motorist coverage of an insurance policy shall be subject
32 to this chapter only if the owner of the policy is the employer of the
33 injured worker.

34 (5) For the purposes of this chapter, "recovery" includes all
35 damages except loss of consortium.

36 **Sec. 3.** RCW 51.24.050 and 1984 c 218 s 4 are each amended to read
37 as follows:

1 (1) An election not to proceed against the third person operates as
2 an assignment of the cause of action to the department or self-insurer,
3 which may prosecute or compromise the action in its discretion in the
4 name of the injured worker, beneficiary or legal representative.

5 (2) If an injury to a worker results in the worker's death, the
6 department or self-insurer to which the cause of action has been
7 assigned may petition a court for the appointment of a special personal
8 representative for the limited purpose of maintaining an action under
9 this chapter and chapter 4.20 RCW.

10 (3) If a beneficiary is a minor child, an election not to proceed
11 against a third person on such beneficiary's cause of action may be
12 exercised by the beneficiary's legal custodian or guardian.

13 (4) Any recovery made by the department or self-insurer shall be
14 distributed as follows:

15 (a) The department or self-insurer shall be paid the expenses
16 incurred in making the recovery including reasonable costs of legal
17 services;

18 (b) The injured worker or beneficiary shall be paid twenty-five
19 percent of the balance of the recovery made, which shall not be subject
20 to subsection (5) of this section: PROVIDED, That in the event of a
21 compromise and settlement by the parties, the injured worker or
22 beneficiary may agree to a sum less than twenty-five percent;

23 (c) The department and/or self-insurer shall be paid the
24 compensation and benefits paid to or on behalf of the injured worker or
25 beneficiary by the department and/or self-insurer; and

26 (d) The injured worker or beneficiary shall be paid any remaining
27 balance.

28 (5) Thereafter no payment shall be made to or on behalf of a worker
29 or beneficiary by the department and/or self-insurer for such injury
30 until the amount of any further compensation and benefits shall equal
31 any such remaining balance. Thereafter, such benefits shall be paid by
32 the department and/or self-insurer to or on behalf of the worker or
33 beneficiary as though no recovery had been made from a third person.

34 ~~(6) ((In the case of an employer not qualifying as a self-insurer,~~
35 ~~the department shall make a retroactive adjustment to such employer's~~
36 ~~experience rating in which the third party claim has been included to~~
37 ~~reflect that portion of the award or settlement which is reimbursed for~~
38 ~~compensation and benefits paid and, if the claim is open at the time of~~

1 ~~recovery, applied against further compensation or benefits to which the~~
2 ~~injured worker or beneficiary may be entitled.~~

3 (7)) When the cause of action has been assigned to the self-
4 insurer and compensation and benefits have been paid and/or are payable
5 from state funds for the same injury:

6 (a) The prosecution of such cause of action shall also be for the
7 benefit of the department to the extent of compensation and benefits
8 paid and payable from state funds;

9 (b) Any compromise or settlement of such cause of action which
10 results in less than the entitlement under this title is void unless
11 made with the written approval of the department;

12 (c) The department shall be reimbursed for compensation and
13 benefits paid from state funds;

14 (d) The department shall bear its proportionate share of the costs
15 and reasonable attorneys' fees incurred by the self-insurer in
16 obtaining the award or settlement; and

17 (e) Any remaining balance under subsection (4)(d) of this section
18 shall be applied, under subsection (5) of this section, to reduce the
19 obligations of the department and self-insurer to pay further
20 compensation and benefits in proportion to which the obligations of
21 each bear to the remaining entitlement of the worker or beneficiary.

22 **Sec. 4.** RCW 51.24.060 and 1993 c 496 s 2 are each amended to read
23 as follows:

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

27 (a) The costs and reasonable attorneys' fees shall be paid
28 proportionately by the injured worker or beneficiary and the department
29 and/or self-insurer: PROVIDED, That the department and/or self-insurer
30 may require court approval of costs and attorneys' fees or may petition
31 a court for determination of the reasonableness of costs and attorneys'
32 fees;

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

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

4 (i) The department and/or self-insurer shall bear its proportionate
5 share of the costs and reasonable attorneys' fees incurred by the
6 worker or beneficiary to the extent of the benefits paid under this
7 title: PROVIDED, That the department's and/or self-insurer's
8 proportionate share shall not exceed one hundred percent of the costs
9 and reasonable attorneys' fees;

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

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

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

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

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

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

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

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

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

9 ~~(4) ((In the case of an employer not qualifying as a self-insurer,~~
10 ~~the department shall make a retroactive adjustment to such employer's~~
11 ~~experience rating in which the third party claim has been included to~~
12 ~~reflect that portion of the award or settlement which is reimbursed for~~
13 ~~compensation and benefits paid and, if the claim is open at the time of~~
14 ~~recovery, applied against further compensation and benefits to which~~
15 ~~the injured worker or beneficiary may be entitled.~~

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

19 ~~((+6))~~ (5) It shall be the duty of the person to whom any recovery
20 is paid before distribution under this section to advise the department
21 or self-insurer of the fact and amount of such recovery, the costs and
22 reasonable attorneys' fees associated with the recovery, and to
23 distribute the recovery in compliance with this section.

24 ~~((+7))~~ (6) The distribution of any recovery made by award or
25 settlement of the third party action shall be confirmed by department
26 order, served by registered or certified mail, and shall be subject to
27 chapter 51.52 RCW. In the event the order of distribution becomes
28 final under chapter 51.52 RCW, the director or the director's designee
29 may file with the clerk of any county within the state a warrant in the
30 amount of the sum representing the unpaid lien plus interest accruing
31 from the date the order became final. The clerk of the county in which
32 the warrant is filed shall immediately designate a superior court cause
33 number for such warrant and the clerk shall cause to be entered in the
34 judgment docket under the superior court cause number assigned to the
35 warrant, the name of such worker or beneficiary mentioned in the
36 warrant, the amount of the unpaid lien plus interest accrued and the
37 date when the warrant was filed. The amount of such warrant as
38 docketed shall become a lien upon the title to and interest in all real
39 and personal property of the injured worker or beneficiary against whom

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

13 ~~((+8))~~ (7) The director, or the director's designee, may issue to
14 any person, firm, corporation, municipal corporation, political
15 subdivision of the state, public corporation, or agency of the state,
16 a notice and order to withhold and deliver property of any kind if he
17 or she has reason to believe that there is in the possession of such
18 person, firm, corporation, municipal corporation, political subdivision
19 of the state, public corporation, or agency of the state, property
20 which is due, owing, or belonging to any worker or beneficiary upon
21 whom a warrant has been served by the department for payments due to
22 the state fund. The notice and order to withhold and deliver shall be
23 served by the sheriff of the county or by the sheriff's deputy ~~((7))~~; by
24 certified mail, return receipt requested; or by any authorized
25 representatives of the director. Any person, firm, corporation,
26 municipal corporation, political subdivision of the state, public
27 corporation, or agency of the state upon whom service has been made
28 shall answer the notice within twenty days exclusive of the day of
29 service, under oath and in writing, and shall make true answers to the
30 matters inquired of in the notice and order to withhold and deliver.
31 In the event there is in the possession of the party named and served
32 with such notice and order, any property which may be subject to the
33 claim of the department, such property shall be delivered forthwith to
34 the director or the director's authorized representative upon demand.
35 If the party served and named in the notice and order fails to answer
36 the notice and order within the time prescribed in this section, the
37 court may, after the time to answer such order has expired, render
38 judgment by default against the party named in the notice for the full
39 amount claimed by the director in the notice together with costs. In

1 the event that a notice to withhold and deliver is served upon an
2 employer and the property found to be subject thereto is wages, the
3 employer may assert in the answer to all exemptions provided for by
4 chapter 6.27 RCW to which the wage earner may be entitled.

5 **Sec. 5.** RCW 51.24.090 and 1984 c 218 s 7 are each amended to read
6 as follows:

7 (1) Any compromise or settlement of the third party cause of action
8 by the injured worker or beneficiary which results in less than the
9 entitlement under this title is void unless made with the written
10 approval of the department or self-insurer: PROVIDED, That for the
11 purposes of this chapter, "entitlement" means benefits and compensation
12 paid and (~~payable~~) estimated by the department to be paid in the
13 future.

14 (2) If a compromise or settlement is void because of subsection (1)
15 of this section, the department or self-insurer may petition the court
16 in which the action was filed for an order assigning the cause of
17 action to the department or self-insurer. If an action has not been
18 filed, the department or self-insurer may proceed as provided in
19 chapter 7.24 RCW.

20 **Sec. 6.** RCW 51.32.050 and 1993 c 521 s 1 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~~) hundred percent of the average
24 monthly wage in the state as defined in RCW 51.08.018 shall be paid.

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

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

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

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

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

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

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

10 (b) Where the surviving spouse does not have legal custody of any
11 child or children of the deceased worker or where after the death of
12 the worker legal custody of such child or children passes from such
13 surviving spouse to another, any payment on account of such child or
14 children not in the legal custody of the surviving spouse shall be made
15 to the person or persons having legal custody of such child or
16 children. The amount of such payments shall be five percent of the
17 monthly benefits payable as a result of the worker's death for each
18 such child but such payments shall not exceed twenty-five percent.
19 Such payments on account of such child or children shall be subtracted
20 from the amount to which such surviving spouse would have been entitled
21 had such surviving spouse had legal custody of all of the children and
22 the surviving spouse shall receive the remainder after such payments on
23 account of such child or children have been subtracted. Such payments
24 on account of a child or children not in the legal custody of such
25 surviving spouse shall be apportioned equally among such children.

26 (c) Payments to the surviving spouse of the deceased worker shall
27 cease at the end of the month in which remarriage occurs: PROVIDED,
28 That a monthly payment shall be made to the child or children of the
29 deceased worker from the month following such remarriage in a sum equal
30 to five percent of the wages of the deceased worker for one child and
31 a sum equal to five percent for each additional child up to a maximum
32 of five such children. Payments to such child or children shall be
33 apportioned equally among such children. Such sum shall be in place of
34 any payments theretofore made for the benefit of or on account of any
35 such child or children. If the surviving spouse does not have legal
36 custody of any child or children of the deceased worker, or if after
37 the death of the worker, legal custody of such child or children passes
38 from such surviving spouse to another, any payment on account of such
39 child or children not in the legal custody of the surviving spouse

1 shall be made to the person or persons having legal custody of such
2 child or children.

3 (d) In no event shall the monthly payments provided in subsection
4 (2) of this section exceed the applicable percentage of the average
5 monthly wage in the state as computed under RCW 51.08.018 as follows:

6	AFTER	PERCENTAGE
7	June 30, 1993	105%
8	June 30, 1994	110%
9	June 30, 1995	115%
10	June 30, 1996	120%

11 (e) In addition to the monthly payments provided for in subsection
12 (2) (a) through ~~((+2))~~(c) of this section, a surviving spouse or child
13 or children of such worker if there is no surviving spouse, or
14 dependent parent or parents, if there is no surviving spouse or child
15 or children of any such deceased worker shall be forthwith paid ~~((the))~~
16 a sum ~~((of one thousand six hundred dollars))~~ equal to one hundred
17 percent of the average monthly wage in the state as defined in RCW
18 51.08.018, any such children, or parents to share and share alike in
19 said sum.

20 (f) Upon remarriage of a surviving spouse the monthly payments for
21 the child or children shall continue as provided in this section, but
22 the monthly payments to such surviving spouse shall cease at the end of
23 the month during which remarriage occurs. However, after September 8,
24 1975, an otherwise eligible surviving spouse of a worker who died at
25 any time prior to or after September 8, 1975, shall have an option of:

26 (i) Receiving, once and for all, a lump sum of twenty-four times
27 the monthly compensation rate in effect on the date of remarriage
28 allocable to the spouse for himself or herself pursuant to subsection
29 (2)(a)(i) of this section and subject to any modifications specified
30 under subsection (2)(d) of this section and RCW 51.32.075(3) or fifty
31 percent of the then remaining annuity value of his or her pension,
32 whichever is the lesser: PROVIDED, That if the injury occurred prior
33 to July 28, 1991, the remarriage benefit lump sum available shall be as
34 provided in the remarriage benefit schedules then in effect; or

35 (ii) If a surviving spouse does not choose the option specified in
36 subsection (2)(f)(i) of this section to accept the lump sum payment,
37 the remarriage of the surviving spouse of a worker shall not bar him or
38 her from claiming the lump sum payment authorized in subsection

1 (2)(f)(i) of this section during the life of the remarriage, or shall
2 not prevent subsequent monthly payments to him or to her if the
3 remarriage has been terminated by death or has been dissolved or
4 annulled by valid court decree provided he or she has not previously
5 accepted the lump sum payment.

6 (g) If the surviving spouse during the remarriage should die
7 without having previously received the lump sum payment provided in
8 subsection (2)(f)(i) of this section, his or her estate shall be
9 entitled to receive the sum specified under subsection (2)(f)(i) of
10 this section or fifty percent of the then remaining annuity value of
11 his or her pension whichever is the lesser.

12 (h) The effective date of resumption of payments under subsection
13 (2)(f)(ii) of this section to a surviving spouse based upon termination
14 of a remarriage by death, annulment, or dissolution shall be the date
15 of the death or the date the judicial decree of annulment or
16 dissolution becomes final and when application for the payments has
17 been received.

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

23 (3) If there is a child or children and no surviving spouse of the
24 deceased worker or the surviving spouse is not eligible for benefits
25 under this title, a sum equal to thirty-five percent of the wages of
26 the deceased worker shall be paid monthly for one child and a sum
27 equivalent to fifteen percent of such wage shall be paid monthly for
28 each additional child, the total of such sum to be divided among such
29 children, share and share alike: PROVIDED, That benefits under this
30 subsection or subsection (4) of this section shall not exceed the
31 lesser of sixty-five percent of the wages of the deceased worker at the
32 time of his or her death or the applicable percentage of the average
33 monthly wage in the state as defined in RCW 51.08.018, as follows:

34	AFTER	PERCENTAGE
35	June 30, 1993	105%
36	June 30, 1994	110%
37	June 30, 1995	115%
38	June 30, 1996	120%

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

4 (5) If the worker leaves no surviving spouse or child, but leaves
5 a dependent or dependents, a monthly payment shall be made to each
6 dependent equal to fifty percent of the average monthly support
7 actually received by such dependent from the worker during the twelve
8 months next preceding the occurrence of the injury, but the total
9 payment to all dependents in any case shall not exceed the lesser of
10 sixty-five percent of the wages of the deceased worker at the time of
11 his or her death or the applicable percentage of the average monthly
12 wage in the state as defined in RCW 51.08.018 as follows:

13	AFTER	PERCENTAGE
14	June 30, 1993	105%
15	June 30, 1994	110%
16	June 30, 1995	115%
17	June 30, 1996	120%

18 If any dependent is under the age of eighteen years at the time of the
19 occurrence of the injury, the payment to such dependent shall cease
20 when such dependent reaches the age of eighteen years except such
21 payments shall continue until the dependent reaches age twenty-three
22 while permanently enrolled at a full time course in an accredited
23 school. The payment to any dependent shall cease if and when, under
24 the same circumstances, the necessity creating the dependency would
25 have ceased if the injury had not happened.

26 (6) For claims filed prior to July 1, 1986, if the injured worker
27 dies during the period of permanent total disability, whatever the
28 cause of death, leaving a surviving spouse, or child, or children, the
29 surviving spouse or child or children shall receive benefits as if
30 death resulted from the injury as provided in subsections (2) through
31 (4) of this section. Upon remarriage or death of such surviving
32 spouse, the payments to such child or children shall be made as
33 provided in subsection (2) of this section when the surviving spouse of
34 a deceased worker remarries.

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

1 **Sec. 7.** RCW 51.52.060 and 1986 c 200 s 11 are each amended to read
2 as follows:

3 Except as otherwise specifically provided in this section, any
4 worker, beneficiary, employer, health services provider, or other
5 person aggrieved by an order, decision, or award of the department
6 must, before he or she appeals to the courts, file with the board and
7 the director, by mail or personally, within sixty days from the day on
8 which such copy of such order, decision, or award was communicated to
9 such person, a notice of appeal to the board: PROVIDED, That a health
10 services provider or other person aggrieved by a department order or
11 decision making demand, whether with or without penalty, solely for
12 repayment of sums paid to a provider of medical, dental, vocational, or
13 other health services rendered to an industrially injured worker must,
14 before he or she appeals to the courts, file with the board and the
15 director, by mail or personally, within twenty days from the day on
16 which such copy of such order or decision was communicated to the
17 health services provider upon whom the department order or decision was
18 served, a notice of appeal to the board. Within ten days of the date
19 on which an appeal has been granted by the board, the board shall
20 notify the other interested parties thereto of the receipt thereof and
21 shall forward a copy of said notice of appeal to such other interested
22 parties. Within twenty days of the receipt of such notice of the
23 board, the worker or the employer may file with the board a cross-
24 appeal from the order of the department from which the original appeal
25 was taken: PROVIDED, That nothing contained in this section shall be
26 deemed to change, alter or modify the practice or procedure of the
27 department for the payment of awards pending appeal: AND PROVIDED,
28 That failure to file notice of appeal with both the board and the
29 department shall not be ground for denying the appeal if the notice of
30 appeal is filed with either the board or the department: AND PROVIDED,
31 That, if within the time limited for filing a notice of appeal to the
32 board from an order, decision, or award of the department, the
33 department shall direct the submission of further evidence or the
34 investigation of any further fact, the time for filing such notice of
35 appeal shall not commence to run until such person shall have been
36 advised in writing of the final decision of the department in the
37 matter: PROVIDED, FURTHER, That in the event the department shall
38 direct the submission of further evidence or the investigation of any
39 further fact, as above provided, the department shall render a final

1 order, decision, or award within ninety days from the date such further
2 submission of evidence or investigation of further fact is ordered
3 which time period may be extended by the department for good cause
4 stated in writing to all interested parties for an additional ninety
5 days: PROVIDED, FURTHER, That the department, either within the time
6 limited for appeal, or within thirty days after receiving a notice of
7 appeal, may modify, reverse or change any order, decision, or award, or
8 may hold any such order, decision, or award in abeyance for a period of
9 ninety days which time period may be extended by the department for
10 good cause stated in writing to all interested parties for an
11 additional ninety days pending further investigation in light of the
12 allegations of the notice of appeal, and the board shall thereupon deny
13 the appeal, without prejudice to the appellant's right to appeal from
14 any subsequent determinative order issued by the department.

15 NEW SECTION. **Sec. 8.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

--- END ---