

1 (a) Provide accurate, timely, and objective information without
2 charge to injured workers and employers covered under this title,
3 including providing counseling on workers' and employers' rights and
4 responsibilities and individual counseling on specific claims under
5 this title. At the request of an injured worker, the ombudsprogram
6 shall assist the injured worker in every phase of the industrial
7 insurance process, from claim filing to claim closure, but shall not
8 assist an injured worker before the board of industrial insurance
9 appeals or the courts. The assistance that may be offered shall
10 include intervention on behalf of injured workers with the department
11 and/or the employer. Such intervention shall include filing protest
12 letters, providing voluntary mediation, advising workers of rights and
13 entitlements under this title, and assisting the worker in every phase
14 of an industrial insurance claim;

15 (b) Work with the department to develop and implement solutions to
16 common, recurring problems identified in the course of providing
17 individual counseling under (a) of this subsection;

18 (c) Provide workshops and education programs for workers'
19 compensation practitioners, worker representatives, employers, and
20 other interested parties, covering issues such as proper claims filing
21 procedures, workers' and employers' rights and responsibilities, and
22 return-to-work requirements;

23 (d) As requested by labor or management, encourage and facilitate
24 labor/management cooperation that promotes higher safety awareness,
25 expedites return to work options, and reduces barriers between labor
26 and management;

27 (e) Support department initiatives and programs designed to
28 facilitate effective communication and conflict resolution for workers
29 and employers;

30 (f) Maintain a tracking system, approved by the director or
31 director's designee, that records the number and geographic location of
32 claimants served, the issues encountered, and any other data identified
33 by the ombudsperson;

34 (g) Develop and provide the director and the ombudsprogram advisory
35 committee with an annual plan for completing the program's activities;

36 (h) Make reports on the program's activities to the director and
37 the ombudsprogram advisory committee, as requested; and

1 (i) Make recommendations to the governor and director based on the
2 program's activities and findings that address systemic and pervasive
3 problems within the industrial insurance system. The department must
4 review and report its response to the recommendations to the governor,
5 legislature, ombudsprogram advisory committee, and workers'
6 compensation advisory committee.

7 (2)(a) The governor shall appoint an ombudsperson responsible for
8 administering the ombudsprogram from a list of at least three
9 nominations submitted by an organization, statewide in scope, which
10 through its affiliates represents a cross section and a majority of the
11 organized labor of this state. The person appointed as ombudsperson
12 shall hold office for a term of five years and shall continue to hold
13 office until reappointed or until his or her successor is appointed.
14 The governor may remove the ombudsperson only for neglect of duty,
15 misconduct, or inability to perform his or her duties. Any vacancy
16 must be filled by similar appointment for the remainder of the
17 unexpired term.

18 (b)(i) The ombudsperson may hire such staff as he or she deems
19 necessary to carry out the mission of the ombudsprogram, including
20 hiring qualified claims adjudicators, hiring or contracting for access
21 to legal counsel, and hiring support staff to respond to inquiries and
22 claim specific issues.

23 (ii) In any fiscal year, the level of full-time equivalent
24 employees authorized for the ombudsprogram must be at a level that
25 permits the ombudsprogram to maintain staffing levels that are, on a
26 per claim basis, no less than the staffing levels generally found in
27 the organizations that provide claims management functions for self-
28 insurers. The director shall make determinations of the full-time
29 equivalent levels required by this subsection and report such
30 determinations to the office of financial management in department
31 budget submittals.

32 (3) The director shall appoint an ombudsprogram advisory committee
33 composed of members representing the following: Three members
34 representing the department; two members representing labor; and two
35 members representing business. The advisory committee must meet at
36 least quarterly. The advisory committee will review the program's
37 performance and advise the department and the program on issues that
38 may arise regarding the program or program performance.

1 (4) The department shall maintain at least two department staff
2 liaisons to the ombudsprogram, one a senior level claims adjudicator
3 and one from the self-insurance section.

4 (5) The ombudsprogram shall be funded equally from the medical aid
5 fund and the accident fund, with an assessment imposed on and collected
6 from self-insurers to pay their pro rata share of the program's
7 administrative costs.

8 **PART II - SELF-INSURER CLAIMS ADMINISTRATION AUTHORITY**

9 NEW SECTION. **Sec. 2.** A new section is added to chapter 51.14 RCW
10 to read as follows:

11 (1) A self-insurer is authorized to issue the following orders
12 subject to the requirements of this section:

13 (a) Claims allowance orders. Any order denying a claim or
14 regarding segregation of conditions unrelated to the industrial injury
15 or occupational disease may be issued only by the department;

16 (b) Claims closure orders as authorized in RCW 51.32.055. If the
17 self-insurer issues a closing order that includes an award for
18 permanent partial disability, the self-insurer must pay the permanent
19 partial disability award within fourteen days after the date on which
20 the order was communicated to the worker;

21 (c) Wage orders pursuant to RCW 51.08.178; and

22 (d) Orders terminating temporary total disability benefits or
23 denying medical treatment. A self-insurer is not authorized to
24 terminate temporary total disability payments or deny medical treatment
25 until the self-insurer issues an order complying with this section.

26 (2)(a) When a self-insurer issues an order under subsection (1)(a),
27 (c), or (d) of this section, the order must be communicated to both the
28 claimant and the department self-insurance section. Copies of all
29 documents, including any calculations, used or relied on by the self-
30 insurer in issuing the order must be enclosed with the order. The
31 claimant must also receive a standardized pamphlet approved by the
32 department that sets forth the claimant's protest and appeals rights
33 under this title, with a detachable postcard addressed to the
34 department which may be used by the claimant to file a protest.

35 (b) If the claimant files a protest with the department under this
36 section:

1 (i) Within five days after the protest is filed, the department
2 must notify the self-insurer and, within ten days after the date on
3 which the notice was communicated to the self-insurer, the self-insurer
4 must forward a complete copy of the claimant's claim file to the
5 department;

6 (ii) The self-insurer's order must be held in abeyance. The
7 department shall review the order and, within forty-five days after the
8 date the protest was filed, enter a further determinative order as
9 provided for in RCW 51.52.050. However, this forty-five day limitation
10 on the review period may be waived by the claimant, and, if waived, the
11 department must enter the further determinative order within seventy-
12 five days after the date that the protest was filed; and

13 (iii) If the department vacates or modifies the self-insurer's
14 order, the self-insurer must comply with the department's order within
15 ten days after the date on which the vacation or modification order was
16 communicated to the self-insurer. If a self-insurer files an appeal of
17 the department order with the board of industrial insurance appeals,
18 the appeal shall not act as a stay, and the self-insurer must pay all
19 benefits ordered by the department pending a final determination by the
20 board or a court. If the self-insurer prevails in its appeal, the
21 benefits paid may be recouped pursuant to RCW 51.32.240.

22 (c) If no protest or appeal to the self-insurer's order is timely
23 filed under this title, the order becomes final and has the same force
24 and effect as a department order that has become final under RCW
25 51.52.050.

26 (3)(a) If a self-insurer is assessed two or more penalties under
27 section 10 of this act in any individual claim under this title, the
28 self-insurer shall lose its right to adjudicate that claim, and the
29 department must promptly intervene and administer the claim.

30 (b) If a self-insurer is assessed a penalty for a level two
31 violation or, within one year, penalties for two level one violations
32 under section 10 of this act, the self-insurer may not issue orders
33 under this section for a period of twenty-four consecutive months
34 beginning on the date the department determines, and the department
35 must promptly intervene and administer the claims during that period.

36 **Sec. 3.** RCW 51.14.120 and 2001 c 152 s 1 are each amended to read
37 as follows:

1 (1) The self-insurer shall provide, when authorized under RCW
2 51.28.070, a copy of the employee's claim file at no cost within
3 fifteen days of receipt of a request by the employee or the employee's
4 representative, and shall provide the physician performing an
5 examination with all relevant medical records from the worker's claim
6 file, but only to the extent required of the department under RCW
7 51.36.070. If the self-insured employer determines that release of the
8 claim file to an unrepresented worker in whole or in part, may not be
9 in the worker's best interests, the employer must submit a request for
10 denial with an explanation along with a copy of that portion of the
11 claim file not previously provided within twenty days after the request
12 from the worker. In the case of second or subsequent requests, a
13 reasonable charge for copying may be made. The self-insurer shall
14 provide the entire contents of the claim file unless the request is for
15 only a particular portion of the file. Any new material added to the
16 claim file after the initial request shall be provided under the same
17 terms and conditions as the initial request.

18 (2) The self-insurer shall transmit notice to the department of any
19 protest or appeal by an employee relating to the administration of an
20 industrial injury or occupational disease claim under this chapter
21 within five working days of receipt. The date that the protest or
22 appeal is received by the self-insurer shall be deemed to be the date
23 the protest is received by the department for the purpose of RCW
24 51.52.050.

25 (3) The self-insurer shall submit a medical report with the request
26 for closure of a claim, if the self-insurer makes a request for claim
27 closure under this chapter.

28 **Sec. 4.** RCW 51.14.130 and 1993 c 122 s 3 are each amended to read
29 as follows:

30 The self-insurer shall request allowance, or issue an order
31 allowing a claim, or request denial of a claim within ((~~sixty~~)) thirty
32 days from the date that the claim is filed. If the self-insurer fails
33 to act within ((~~sixty~~)) thirty days, the department shall promptly
34 intervene and adjudicate the claim.

35 **Sec. 5.** RCW 51.32.055 and 2004 c 65 s 8 are each amended to read
36 as follows:

1 (1) One purpose of this title is to restore the injured worker as
2 nearly as possible to the condition of self-support as an able-bodied
3 worker. Benefits for permanent disability shall be determined under
4 the director's supervision, except as otherwise authorized in
5 subsection (9) or (10) of this section, only after the injured worker's
6 condition becomes fixed.

7 (2) All determinations of permanent disabilities shall be made by
8 the department, except as otherwise authorized in subsection (9) or
9 (10) of this section. Either the worker, employer, or self-insurer may
10 make a request or the inquiry may be initiated by the director or, as
11 authorized in subsection (9) or (10) of this section, by the self-
12 insurer on the director or the self-insurer's own motion.
13 Determinations shall be required in every instance where permanent
14 disability is likely to be present. All medical reports and other
15 pertinent information in the possession of or under the control of the
16 employer or, if the self-insurer has made a request to the department,
17 in the possession of or under the control of the self-insurer shall be
18 forwarded to the director with the request.

19 (3) A request for determination of permanent disability shall be
20 examined by the department or, if authorized in subsection (9) or (10)
21 of this section, the self-insurer, and the department shall issue an
22 order in accordance with RCW 51.52.050 or, in the case of a self-
23 insured employer, the self-insurer may: (a) Enter a written order,
24 communicated to the worker and the department self-insurance section in
25 accordance with subsection (9) or (10) of this section, as applicable;
26 or (b) request the department to issue an order in accordance with RCW
27 51.52.050.

28 (4) The department or, in cases authorized in subsection (9) or
29 (10) of this section, the self-insurer may require that the worker
30 present himself or herself for a special medical examination by a
31 physician or physicians selected by the department, and the department
32 or, in cases authorized in subsection (9) or (10) of this section, the
33 self-insurer may require that the worker present himself or herself for
34 a personal interview. The costs of the examination or interview,
35 including payment of any reasonable travel expenses, shall be paid by
36 the department or self-insurer, as the case may be.

37 (5) The director may establish a medical bureau within the
38 department to perform medical examinations under this section.

1 Physicians hired or retained for this purpose shall be grounded in
2 industrial medicine and in the assessment of industrial physical
3 impairment. Self-insurers shall bear a proportionate share of the cost
4 of the medical bureau in a manner to be determined by the department.

5 (6) Where a dispute arises from the handling of any claim before
6 the condition of the injured worker becomes fixed, the worker,
7 employer, or self-insurer may request the department to resolve the
8 dispute or the director may initiate an inquiry on his or her own
9 motion. In these cases, the department shall proceed as provided in
10 this section and an order shall issue in accordance with RCW 51.52.050.

11 (7)(a) If a claim (i) is accepted by a self-insurer after June 30,
12 1986, and before August 1, 1997, (ii) involves only medical treatment
13 and the payment of temporary disability compensation under RCW
14 51.32.090 or only the payment of temporary disability compensation
15 under RCW 51.32.090, (iii) at the time medical treatment is concluded
16 does not involve permanent disability, (iv) is one with respect to
17 which the department has not intervened under subsection (6) of this
18 section, and (v) the injured worker has returned to work with the self-
19 insured employer of record, whether at the worker's previous job or at
20 a job that has comparable wages and benefits, the claim may be closed
21 by the self-insurer, subject to reporting of claims to the department
22 in a manner prescribed by department rules adopted under chapter 34.05
23 RCW.

24 (b) All determinations of permanent disability for claims accepted
25 under this subsection (7) by self-insurers shall be made by the self-
26 insured section of the department under subsections (1) through (4) of
27 this section.

28 (c) Upon closure of a claim under (a) of this subsection, the self-
29 insurer shall enter a written order, communicated to the worker and the
30 department self-insurance section, which contains the following
31 statement clearly set forth in bold face type: "This order constitutes
32 notification that your claim is being closed with medical benefits and
33 temporary disability compensation only as provided, and with the
34 condition you have returned to work with the self-insured employer. If
35 for any reason you disagree with the conditions or duration of your
36 return to work or the medical benefits or the temporary disability
37 compensation that has been provided, you must protest in writing to the

1 department of labor and industries, self-insurance section, within
2 sixty days of the date you received this order."

3 (8)(a) If a claim (i) is accepted by a self-insurer after June 30,
4 1990, and before August 1, 1997, (ii) involves only medical treatment,
5 (iii) does not involve payment of temporary disability compensation
6 under RCW 51.32.090, and (iv) at the time medical treatment is
7 concluded does not involve permanent disability, the claim may be
8 closed by the self-insurer, subject to reporting of claims to the
9 department in a manner prescribed by department rules adopted under
10 chapter 34.05 RCW. Upon closure of a claim, the self-insurer shall
11 enter a written order, communicated to the worker, which contains the
12 following statement clearly set forth in bold-face type: "This order
13 constitutes notification that your claim is being closed with medical
14 benefits only, as provided. If for any reason you disagree with this
15 closure, you must protest in writing to the Department of Labor and
16 Industries, Olympia, within 60 days of the date you received this
17 order. The department will then review your claim and enter a further
18 determinative order."

19 (b) All determinations of permanent disability for claims accepted
20 under this subsection (8) by self-insurers shall be made by the self-
21 insured section of the department under subsections (1) through (4) of
22 this section.

23 (9)(a) If a claim: (i) Is accepted by a self-insurer after July
24 31, 1997, and before the effective date of this section; (ii)(A)
25 involves only medical treatment, or medical treatment and the payment
26 of temporary disability compensation under RCW 51.32.090, and a
27 determination of permanent partial disability, if applicable, has been
28 made by the self-insurer as authorized in this subsection; or (B)
29 involves only the payment of temporary disability compensation under
30 RCW 51.32.090 and a determination of permanent partial disability, if
31 applicable, has been made by the self-insurer as authorized in this
32 subsection; (iii) is one with respect to which the department has not
33 intervened under subsection (6) of this section; and (iv) concerns an
34 injured worker who has returned to work with the self-insured employer
35 of record, whether at the worker's previous job or at a job that has
36 comparable wages and benefits, the claim may be closed by the self-
37 insurer, subject to reporting of claims to the department in a manner
38 prescribed by department rules adopted under chapter 34.05 RCW.

1 (b) If a physician or licensed advanced registered nurse
2 practitioner submits a report to the self-insurer that concludes that
3 the worker's condition is fixed and stable and supports payment of a
4 permanent partial disability award, and if within fourteen days from
5 the date the self-insurer mailed the report to the attending or
6 treating physician or licensed advanced registered nurse practitioner,
7 the worker's attending or treating physician or licensed advanced
8 registered nurse practitioner disagrees in writing that the worker's
9 condition is fixed and stable, the self-insurer must get a supplemental
10 medical opinion from a provider on the department's approved examiner's
11 list before closing the claim. In the alternative, the self-insurer
12 may forward the claim to the department, which must review the claim
13 and enter a final order as provided for in RCW 51.52.050.

14 (c) Upon closure of a claim under this subsection (9), the self-
15 insurer shall enter a written order, communicated to the worker and the
16 department self-insurance section, which contains the following
17 statement clearly set forth in bold-face type: "This order constitutes
18 notification that your claim is being closed with such medical benefits
19 and temporary disability compensation as provided to date and with such
20 award for permanent partial disability, if any, as set forth below, and
21 with the condition that you have returned to work with the self-insured
22 employer. If for any reason you disagree with the conditions or
23 duration of your return to work or the medical benefits, temporary
24 disability compensation provided, or permanent partial disability that
25 has been awarded, you must protest in writing to the Department of
26 Labor and Industries, Self-Insurance Section, within sixty days of the
27 date you received this order. If you do not protest this order to the
28 department, this order will become final."

29 (d) All determinations of permanent partial disability for claims
30 accepted by self-insurers under this subsection (9) may be made by the
31 self-insurer or the self-insurer may request a determination by the
32 self-insured section of the department. All determinations shall be
33 made under subsections (1) through (4) of this section.

34 (10)(a) A claim that is accepted by a self-insurer on or after the
35 effective date of this section may be closed by the self-insurer,
36 subject to reporting of claims to the department in a manner prescribed
37 by department rules adopted under chapter 34.05 RCW.

1 (b)(i) Upon closure of a claim under this subsection (10), the
2 self-insurer shall enter a written order, communicated to the worker
3 and the department self-insurance section, that contains the following
4 statement clearly set forth in bold-face type: "This order constitutes
5 notification that your claim is being closed with such medical benefits
6 and temporary disability compensation as provided to date and with such
7 award for permanent partial disability, if any, as set forth below. If
8 for any reason you disagree with the medical benefits or temporary
9 disability compensation provided, or permanent partial disability that
10 has been awarded, you must protest in writing to the Department of
11 Labor and Industries, Self-Insurance Section, within sixty days of the
12 date you received this order. If you do not protest this order to the
13 department, this order will become final."

14 (ii) Copies of all documents, including any calculations, used or
15 relied on by the self-insurer in issuing the order must be enclosed
16 with the order. The claimant must also receive a standardized pamphlet
17 approved by the department that sets forth the claimant's protest and
18 appeals rights under this title, with a detachable postcard addressed
19 to the department that may be used by the claimant to file a protest.

20 (c) All determinations of permanent partial disability for claims
21 accepted by self-insurers under this subsection (10) may be made by the
22 self-insurer, or the self-insurer may request a determination by the
23 self-insured section of the department. All determinations shall be
24 made under subsections (1) through (4) of this section.

25 (11)(a)(i) If the department receives a protest of an order issued
26 by a self-insurer under subsections (7) through ((+9)) (10) of this
27 section, the self-insurer's closure order must be held in abeyance.
28 The department shall review the claim closure action and, within forty-
29 five days after the date the protest was filed, enter a further
30 determinative order as provided for in RCW 51.52.050. However, this
31 forty-five day limitation on the review period may be waived by the
32 claimant, and, if waived, the department must enter the further
33 determinative order within seventy-five days after the date that the
34 protest was filed.

35 (ii) If the department vacates or modifies the self-insurer's
36 order, the self-insurer must comply with the department's order within
37 ten days after the date on which the vacation or modification order was
38 communicated to the self-insurer. If a self-insurer files an appeal of

1 the department's order with the board of industrial insurance appeals,
2 the appeal shall not act as a stay, and the self-insurer must pay all
3 benefits ordered by the department pending a final determination by the
4 board or a court. If the self-insurer prevails in its appeal, the
5 benefits paid may be recouped pursuant to RCW 51.32.240.

6 (b) If no protest is timely filed, the closing order issued by the
7 self-insurer shall become final and shall have the same force and
8 effect as a department order that has become final under RCW 51.52.050.

9 ~~((+11+))~~ (12) If within two years of claim closure under
10 subsections (7) through ~~((+9+))~~ (10) of this section, the department
11 determines that the self-insurer has made payment of benefits because
12 of clerical error, mistake of identity, or innocent misrepresentation
13 or the department discovers a violation of the conditions of claim
14 closure, the department may require the self-insurer to correct the
15 benefits paid or payable. This subsection ~~((+11+))~~ does not limit in
16 any way the application of RCW 51.32.240.

17 ~~((+12+))~~ (13) For the purposes of this section, "comparable wages
18 and benefits" means wages and benefits that are at least ninety-five
19 percent of the wages and benefits received by the worker at the time of
20 injury.

21 **Sec. 6.** RCW 51.32.055 and 1997 c 416 s 1 are each amended to read
22 as follows:

23 (1) One purpose of this title is to restore the injured worker as
24 nearly as possible to the condition of self-support as an able-bodied
25 worker. Benefits for permanent disability shall be determined under
26 the director's supervision, except as otherwise authorized in
27 subsection (9) or (10) of this section, only after the injured worker's
28 condition becomes fixed.

29 (2) All determinations of permanent disabilities shall be made by
30 the department, except as otherwise authorized in subsection (9) or
31 (10) of this section. Either the worker, employer, or self-insurer may
32 make a request or the inquiry may be initiated by the director or, as
33 authorized in subsection (9) or (10) of this section, by the self-
34 insurer on the director or the self-insurer's own motion.
35 Determinations shall be required in every instance where permanent
36 disability is likely to be present. All medical reports and other
37 pertinent information in the possession of or under the control of the

1 employer or, if the self-insurer has made a request to the department,
2 in the possession of or under the control of the self-insurer shall be
3 forwarded to the director with the request.

4 (3) A request for determination of permanent disability shall be
5 examined by the department or, if authorized in subsection (9) or (10)
6 of this section, the self-insurer, and the department shall issue an
7 order in accordance with RCW 51.52.050 or, in the case of a self-
8 insured employer, the self-insurer may: (a) Enter a written order,
9 communicated to the worker and the department self-insurance section in
10 accordance with subsection (9) or (10) of this section, as applicable;
11 or (b) request the department to issue an order in accordance with RCW
12 51.52.050.

13 (4) The department or, in cases authorized in subsection (9) or
14 (10) of this section, the self-insurer may require that the worker
15 present himself or herself for a special medical examination by a
16 physician or physicians selected by the department, and the department
17 or, in cases authorized in subsection (9) or (10) of this section, the
18 self-insurer may require that the worker present himself or herself for
19 a personal interview. The costs of the examination or interview,
20 including payment of any reasonable travel expenses, shall be paid by
21 the department or self-insurer, as the case may be.

22 (5) The director may establish a medical bureau within the
23 department to perform medical examinations under this section.
24 Physicians hired or retained for this purpose shall be grounded in
25 industrial medicine and in the assessment of industrial physical
26 impairment. Self-insurers shall bear a proportionate share of the cost
27 of the medical bureau in a manner to be determined by the department.

28 (6) Where a dispute arises from the handling of any claim before
29 the condition of the injured worker becomes fixed, the worker,
30 employer, or self-insurer may request the department to resolve the
31 dispute or the director may initiate an inquiry on his or her own
32 motion. In these cases, the department shall proceed as provided in
33 this section and an order shall issue in accordance with RCW 51.52.050.

34 (7)(a) If a claim (i) is accepted by a self-insurer after June 30,
35 1986, and before August 1, 1997, (ii) involves only medical treatment
36 and the payment of temporary disability compensation under RCW
37 51.32.090 or only the payment of temporary disability compensation
38 under RCW 51.32.090, (iii) at the time medical treatment is concluded

1 does not involve permanent disability, (iv) is one with respect to
2 which the department has not intervened under subsection (6) of this
3 section, and (v) the injured worker has returned to work with the self-
4 insured employer of record, whether at the worker's previous job or at
5 a job that has comparable wages and benefits, the claim may be closed
6 by the self-insurer, subject to reporting of claims to the department
7 in a manner prescribed by department rules adopted under chapter 34.05
8 RCW.

9 (b) All determinations of permanent disability for claims accepted
10 under this subsection (7) by self-insurers shall be made by the self-
11 insured section of the department under subsections (1) through (4) of
12 this section.

13 (c) Upon closure of a claim under (a) of this subsection, the self-
14 insurer shall enter a written order, communicated to the worker and the
15 department self-insurance section, which contains the following
16 statement clearly set forth in bold face type: "This order constitutes
17 notification that your claim is being closed with medical benefits and
18 temporary disability compensation only as provided, and with the
19 condition you have returned to work with the self-insured employer. If
20 for any reason you disagree with the conditions or duration of your
21 return to work or the medical benefits or the temporary disability
22 compensation that has been provided, you must protest in writing to the
23 department of labor and industries, self-insurance section, within
24 sixty days of the date you received this order."

25 (8)(a) If a claim (i) is accepted by a self-insurer after June 30,
26 1990, and before August 1, 1997, (ii) involves only medical treatment,
27 (iii) does not involve payment of temporary disability compensation
28 under RCW 51.32.090, and (iv) at the time medical treatment is
29 concluded does not involve permanent disability, the claim may be
30 closed by the self-insurer, subject to reporting of claims to the
31 department in a manner prescribed by department rules adopted under
32 chapter 34.05 RCW. Upon closure of a claim, the self-insurer shall
33 enter a written order, communicated to the worker, which contains the
34 following statement clearly set forth in bold-face type: "This order
35 constitutes notification that your claim is being closed with medical
36 benefits only, as provided. If for any reason you disagree with this
37 closure, you must protest in writing to the Department of Labor and

1 Industries, Olympia, within 60 days of the date you received this
2 order. The department will then review your claim and enter a further
3 determinative order."

4 (b) All determinations of permanent disability for claims accepted
5 under this subsection (8) by self-insurers shall be made by the self-
6 insured section of the department under subsections (1) through (4) of
7 this section.

8 (9)(a) If a claim: (i) Is accepted by a self-insurer after July
9 31, 1997, and before the effective date of this section; (ii)(A)
10 involves only medical treatment, or medical treatment and the payment
11 of temporary disability compensation under RCW 51.32.090, and a
12 determination of permanent partial disability, if applicable, has been
13 made by the self-insurer as authorized in this subsection; or (B)
14 involves only the payment of temporary disability compensation under
15 RCW 51.32.090 and a determination of permanent partial disability, if
16 applicable, has been made by the self-insurer as authorized in this
17 subsection; (iii) is one with respect to which the department has not
18 intervened under subsection (6) of this section; and (iv) concerns an
19 injured worker who has returned to work with the self-insured employer
20 of record, whether at the worker's previous job or at a job that has
21 comparable wages and benefits, the claim may be closed by the self-
22 insurer, subject to reporting of claims to the department in a manner
23 prescribed by department rules adopted under chapter 34.05 RCW.

24 (b) If a physician submits a report to the self-insurer that
25 concludes that the worker's condition is fixed and stable and supports
26 payment of a permanent partial disability award, and if within fourteen
27 days from the date the self-insurer mailed the report to the attending
28 or treating physician, the worker's attending or treating physician
29 disagrees in writing that the worker's condition is fixed and stable,
30 the self-insurer must get a supplemental medical opinion from a
31 provider on the department's approved examiner's list before closing
32 the claim. In the alternative, the self-insurer may forward the claim
33 to the department, which must review the claim and enter a final order
34 as provided for in RCW 51.52.050.

35 (c) Upon closure of a claim under this subsection (9), the self-
36 insurer shall enter a written order, communicated to the worker and the
37 department self-insurance section, which contains the following
38 statement clearly set forth in bold-face type: "This order constitutes

1 notification that your claim is being closed with such medical benefits
2 and temporary disability compensation as provided to date and with such
3 award for permanent partial disability, if any, as set forth below, and
4 with the condition that you have returned to work with the self-insured
5 employer. If for any reason you disagree with the conditions or
6 duration of your return to work or the medical benefits, temporary
7 disability compensation provided, or permanent partial disability that
8 has been awarded, you must protest in writing to the Department of
9 Labor and Industries, Self-Insurance Section, within sixty days of the
10 date you received this order. If you do not protest this order to the
11 department, this order will become final."

12 (d) All determinations of permanent partial disability for claims
13 accepted by self-insurers under this subsection (9) may be made by the
14 self-insurer or the self-insurer may request a determination by the
15 self-insured section of the department. All determinations shall be
16 made under subsections (1) through (4) of this section.

17 (10)(a) A claim that is accepted by a self-insurer on or after the
18 effective date of this section may be closed by the self-insurer,
19 subject to reporting of claims to the department in a manner prescribed
20 by department rules adopted under chapter 34.05 RCW.

21 (b)(i) Upon closure of a claim under this subsection (10), the
22 self-insurer shall enter a written order, communicated to the worker
23 and the department self-insurance section, that contains the following
24 statement clearly set forth in bold-face type: "This order constitutes
25 notification that your claim is being closed with such medical benefits
26 and temporary disability compensation as provided to date and with such
27 award for permanent partial disability, if any, as set forth below. If
28 for any reason you disagree with the medical benefits or temporary
29 disability compensation provided, or permanent partial disability that
30 has been awarded, you must protest in writing to the Department of
31 Labor and Industries, Self-Insurance Section, within sixty days of the
32 date you received this order. If you do not protest this order to the
33 department, this order will become final."

34 (ii) Copies of all documents, including any calculations, used or
35 relied on by the self-insurer in issuing the order must be enclosed
36 with the order. The claimant must also receive a standardized pamphlet
37 approved by the department that sets forth the claimant's protest and

1 appeals rights under this title, with a detachable postcard addressed
2 to the department that may be used by the claimant to file a protest.

3 (c) All determinations of permanent partial disability for claims
4 accepted by self-insurers under this subsection (10) may be made by the
5 self-insurer, or the self-insurer may request a determination by the
6 self-insured section of the department. All determinations shall be
7 made under subsections (1) through (4) of this section.

8 (11)(a)(i) If the department receives a protest of an order issued
9 by a self-insurer under subsections (7) through (~~(9)~~) (10) of this
10 section, the self-insurer's closure order must be held in abeyance.
11 The department shall review the claim closure action and, within forty-
12 five days after the date the protest was filed, enter a further
13 determinative order as provided for in RCW 51.52.050. However, this
14 forty-five day limitation on the review period may be waived by the
15 claimant, and, if waived, the department must enter the further
16 determinative order within seventy-five days after the date that the
17 protest was filed.

18 (ii) If the department vacates or modifies the self-insurer's
19 order, the self-insurer must comply with the department's order within
20 ten days after the date on which the vacation or modification order was
21 communicated to the self-insurer. If a self-insurer files an appeal of
22 the department's order with the board of industrial insurance appeals,
23 the appeal shall not act as a stay, and the self-insurer must pay all
24 benefits ordered by the department pending a final determination by the
25 board or a court. If the self-insurer prevails in its appeal, the
26 benefits paid may be recouped pursuant to RCW 51.32.240.

27 (b) If no protest is timely filed, the closing order issued by the
28 self-insurer shall become final and shall have the same force and
29 effect as a department order that has become final under RCW 51.52.050.

30 (~~(11)~~) (12) If within two years of claim closure under
31 subsections (7) through (~~(9)~~) (10) of this section, the department
32 determines that the self-insurer has made payment of benefits because
33 of clerical error, mistake of identity, or innocent misrepresentation
34 or the department discovers a violation of the conditions of claim
35 closure, the department may require the self-insurer to correct the
36 benefits paid or payable. This subsection (~~(11)~~) does not limit in
37 any way the application of RCW 51.32.240.

1 against the self-insurer of more than twenty-five thousand dollars
2 within one year.

3 **Sec. 8.** RCW 51.14.140 and 1993 c 122 s 4 are each amended to read
4 as follows:

5 (1) Failure of a self-insurer to comply with RCW 51.14.120 ((and)),
6 51.14.130, 51.14.130, 51.32.055 (7) through (10), 51.32.195 (as
7 recodified by this act), or section 2 of this act shall subject the
8 self-insurer to a penalty under RCW 51.48.080, which shall accrue for
9 the benefit of the employee. Each day of failure to comply with RCW
10 51.14.120, 51.32.055 (7) through (10), 51.32.195 (as recodified by this
11 act), or section 2 of this act is a separate violation.

12 (2) The director shall issue an order conforming with RCW 51.52.050
13 determining whether a violation has occurred under this section within
14 thirty days of a request by an employee.

15 **Sec. 9.** RCW 51.28.070 and 1990 c 209 s 2 are each amended to read
16 as follows:

17 (1)(a) Except as provided in this subsection, information contained
18 in the claim files and records of injured workers, under the provisions
19 of this title, shall be deemed confidential and shall not be open to
20 public inspection (other than to public employees in the performance of
21 their official duties)((, but)).

22 (b) Representatives of a claimant, be it an individual or an
23 organization, may review a claim file or receive specific information
24 therefrom upon the presentation of the signed authorization of the
25 claimant. A claimant may review his or her claim file if the director
26 determines, pursuant to criteria adopted by rule, that the review is in
27 the claimant's interest.

28 (c) Employers or their duly authorized representatives may review
29 any files of their own injured workers in connection with any pending
30 claims.

31 (d) Physicians treating or examining workers claiming benefits
32 under this title, or physicians giving medical advice to the department
33 regarding any claim may, at the discretion of the department, inspect
34 the claim files and records of injured workers((, and other persons may
35 make such inspection, at the department's discretion, when such)).

1 (e) Persons who are rendering assistance to the department at any
2 stage of the proceedings on any matter pertaining to the administration
3 of this title may, in the department's discretion, inspect the claim
4 files and records of injured workers.

5 (f) The ombudsperson appointed under section 2 of this act may
6 inspect the claim files and records of an injured worker when rendering
7 assistance to the injured worker pursuant to section 2 of this act.

8 (2) It is a violation of this section if a self-insured employer
9 obtains or discloses information unrelated to the claim of its injured
10 worker or, in violation of department rules, discloses information in
11 a claim file or record of its injured worker. Such violation is
12 subject to a penalty as provided in section 10 of this act.

13 **NEW SECTION. Sec. 10.** A new section is added to chapter 51.48 RCW
14 to read as follows:

15 (1) In addition to any other penalties imposed under this title, a
16 self-insurer is subject to the following penalties for each day that a
17 violation occurs:

18 (a) For a level one violation, a penalty of five hundred dollars;

19 (b) For a level two violation, a penalty of one thousand dollars;

20 or

21 (c) For a level three violation, a penalty of five thousand
22 dollars.

23 (2)(a) The director shall issue an order determining whether there
24 was a violation within thirty days after the request of the claimant.
25 Such an order shall conform to the requirements of RCW 51.52.050.

26 (b) Penalties assessed under this section shall accrue for the
27 benefit of the claimant and shall be paid to him or her. The director
28 may not waive or reduce a penalty assessed under this section.

29 (3) For the purposes of this section:

30 (a) "Level one violation" means:

31 (i) Failing to comply with RCW 51.14.120, 51.14.130, 51.32.055 (7)
32 through (10), 51.32.195 (as recodified by this act), or section 2 of
33 this act;

34 (ii) Inducing an employee to fail to report an injury or
35 occupational disease when the failure does not result in the claim
36 being denied under RCW 51.28.050 or 51.28.055; or

1 (iii) Obtaining or disclosing claim files or records in violation
2 of RCW 51.28.070.

3 (b) "Level two violation" means:

4 (i) Unreasonably or negligently failing to comply with RCW
5 51.14.120, 51.14.130, 51.32.055 (7) through (10), 51.32.195 (as
6 recodified by this act), or section 2 of this act;

7 (ii) Unreasonably or negligently inducing an employee to fail to
8 report an injury or occupational disease when the failure does not
9 result in the claim being denied under RCW 51.28.050 or 51.28.055;

10 (iii) Willfully making it unreasonably necessary for a claimant to
11 resort to proceedings against the employer to obtain any right,
12 benefit, or privilege under this title; or

13 (iv) Unreasonably or negligently disclosing claim files or records
14 in violation of RCW 51.28.070.

15 (c) "Level three violation" means:

16 (i) Willfully inducing an employee to fail to report an injury or
17 occupational disease when the failure results in the claim being denied
18 under RCW 51.28.050 or 51.28.055;

19 (ii) Willfully inducing a claimant to treat an injury or
20 occupational disease in the course of employment as an off-the-job
21 injury or disease; or

22 (iii) Willfully persuading a claimant to accept less than the
23 compensation due under this title.

24 (d) "Willful" means a conscious or deliberate false statement,
25 misrepresentation, omission, or concealment of a material fact with the
26 specific intent of preventing or reducing the award of benefits under
27 this title.

28 (4) The department must track the penalties that are assessed under
29 this section and report at least annually on the types and amount of
30 penalties to the workers' compensation advisory committee.

31 **Sec. 11.** RCW 51.48.017 and 1985 c 347 s 3 are each amended to read
32 as follows:

33 (1) If a self-insurer unreasonably delays or refuses to pay
34 benefits as they become due there shall be paid by the self-insurer
35 upon order of the director an additional amount equal to five hundred
36 dollars for each day of delay or refusal or twenty-five percent of the

1 amount then due, whichever is greater, which shall accrue for the
2 benefit of the claimant and shall be paid to him or her with the
3 benefits which may be assessed under this title.

4 (2) The director shall issue an order determining whether there was
5 an unreasonable delay or refusal to pay benefits within thirty days
6 upon the request of the claimant. Such an order shall conform to the
7 requirements of RCW 51.52.050.

8 (3) The director may not waive or reduce a penalty assessed under
9 this section.

10 **Sec. 12.** RCW 51.48.025 and 1985 c 347 s 8 are each amended to read
11 as follows:

12 (1) No employer may discharge or in any manner discriminate against
13 any employee because such employee: (a) Has filed or communicated to
14 the employer an intent to file a claim for compensation; (b) makes a
15 complaint against a self-insured employer that could result in
16 subjecting the employer to penalties under this title; or (c) exercises
17 any rights provided under this title. However, nothing in this section
18 prevents an employer from taking any action against a worker for other
19 reasons including, but not limited to, the worker's failure to observe
20 health or safety standards adopted by the employer, or the frequency or
21 nature of the worker's job-related accidents.

22 (2) Any employee who believes that he or she has been discharged or
23 otherwise discriminated against by an employer in violation of this
24 section may file a complaint with the director alleging discrimination
25 within ninety days of the date of the alleged violation. Upon receipt
26 of such complaint, the director shall cause an investigation to be made
27 as the director deems appropriate. Within ninety days of the receipt
28 of a complaint filed under this section, the director shall notify the
29 complainant of his or her determination. If upon such investigation,
30 it is determined that this section has been violated, the director
31 shall bring an action in the superior court of the county in which the
32 violation is alleged to have occurred.

33 (3) If the director determines that this section has not been
34 violated, the employee may institute the action on his or her own
35 behalf.

36 (4) In any action brought under this section, the superior court

1 shall have jurisdiction, for cause shown, to restrain violations of
2 subsection (1) of this section and to order all appropriate relief
3 including rehiring or reinstatement of the employee with back pay.

4 **Sec. 13.** RCW 51.48.080 and 1985 c 347 s 7 are each amended to read
5 as follows:

6 (1) Every person, firm, or corporation, other than a self-insurer
7 under this title, who violates or fails to obey, observe, or comply
8 with any rule of the department (~~promulgated~~) adopted under
9 (~~authority of~~) this title(~~, shall be~~) is subject to a penalty
10 (~~of~~) not to exceed five hundred dollars.

11 (2) A self-insurer who violates or fails to obey, observe, or
12 comply with any rule of the department adopted under this title is
13 subject to a penalty of five hundred dollars. This penalty applies in
14 addition to any other penalty imposed under this title, and the
15 director may not waive or reduce a penalty assessed under this
16 subsection.

17 NEW SECTION. **Sec. 14.** A new section is added to chapter 51.48 RCW
18 to read as follows:

19 In an action to collect penalties assessed against a self-insurer
20 under this title, the court shall award reasonable attorneys' fees and
21 reasonable costs of litigation to the prevailing plaintiff.

22 **PART IV - MISCELLANEOUS**

23 **Sec. 15.** RCW 51.44.150 and 1971 ex.s. c 289 s 59 are each amended
24 to read as follows:

25 (1) The director shall impose and collect assessments each fiscal
26 year upon all self-insurers in the amount of the estimated costs of
27 administering their portion of this title during such fiscal year. The
28 time and manner of imposing and collecting assessments due to the
29 department shall be set forth in (~~regulations promulgated~~) rules
30 adopted by the director in accordance with chapter 34.05 RCW.

31 (2)(a) In any fiscal year, the level of full-time equivalent claims
32 adjudication employees authorized for the department's self-insurance
33 section must be at a level that results in an average case load per
34 claims adjudicator that is no less than the average case load per

1 employee adjudicating claims on behalf of self-insured employers. With
2 respect to the department's self-insurance section employees engaged in
3 auditing functions, the level of full-time equivalent employees for
4 this position must be at a level that permits the department to
5 complete an audit of each self-insurer at least every three years.

6 (b) The director shall make determinations of the full-time
7 equivalent levels required by subsection (1) of this section and report
8 such determinations to the office of financial management in department
9 budget submittals.

10 NEW SECTION. Sec. 16. A new section is added to chapter 51.04 RCW
11 to read as follows:

12 The director of labor and industries may adopt such rules as are
13 necessary to implement this act.

14 NEW SECTION. Sec. 17. RCW 51.32.190, 51.32.195, and 51.32.200 are
15 each recodified as sections in chapter 51.14 RCW.

16 NEW SECTION. Sec. 18. Part headings used in this act are not any
17 part of the law.

18 NEW SECTION. Sec. 19. (1) Section 5 of this act expires June 30,
19 2007.

20 (2) Section 6 of this act takes effect June 30, 2007.

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