

SENATE BILL 5218

State of Washington

52nd Legislature

1991 Regular Session

By Senators Anderson, McMullen, A. Smith and Rasmussen; by request of Department of Labor & Industries.

Read first time January 24, 1991. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to industrial insurance payments; and amending RCW
2 51.32.240 and 51.32.050.

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

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

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

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

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

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

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

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

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

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

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

13 This subsection shall apply to all claims regardless of the date of
14 injury or the date of issuance of the order assessing an overpayment.

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

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

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

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

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

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

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

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

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

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

29 (c) Payments to the surviving spouse of the deceased worker shall
30 cease at the end of the month in which remarriage occurs: PROVIDED,

1 That a monthly payment shall be made to the child or children of the
2 deceased worker from the month following such remarriage in a sum equal
3 to five percent of the wages of the deceased worker for one child and
4 a sum equal to five percent for each additional child up to a maximum
5 of five such children. Payments to such child or children shall be
6 apportioned equally among such children. Such sum shall be in place of
7 any payments theretofore made for the benefit of or on account of any
8 such child or children. If the surviving spouse does not have legal
9 custody of any child or children of the deceased worker, or if after
10 the death of the worker, legal custody of such child or children passes
11 from such surviving spouse to another, any payment on account of such
12 child or children not in the legal custody of the surviving spouse
13 shall be made to the person or persons having legal custody of such
14 child or children.

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

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

25 (f) Upon remarriage of a surviving spouse the monthly payments for
26 the child or children shall continue as provided in this section, but
27 the monthly payments to such surviving spouse shall cease at the end of
28 the month during which remarriage occurs. However, after September 8,
29 1975, an otherwise eligible surviving spouse of a worker who died at
30 any time prior to or after September 8, 1975, shall have an option of:

1 (i) Receiving, once and for all, a lump sum of (~~seventy-five~~
2 ~~hundred dollars~~) twenty-four times the monthly compensation rate in
3 effect on the date of remarriage allocable to the spouse for himself or
4 herself pursuant to (2)(a)(i) of this section and subject to any
5 modifications specified under (2)(d) of this section and RCW
6 51.32.075(3) or fifty percent of the then remaining annuity value of
7 his or her pension, whichever is the lesser: PROVIDED, That if the
8 injury occurred prior to (~~July 1, 1971~~) the effective date of this
9 section, the remarriage benefit lump sum available shall be as provided
10 in the remarriage benefit schedules then in effect; or

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

20 (g) If the surviving spouse during the remarriage should die
21 without having previously received the lump sum payment provided in
22 (2)(f)(i) of this section, his or her estate shall be entitled to
23 receive the sum (~~of seventy-five hundred dollars~~) specified under
24 subsection (2)(f)(i) of this section or fifty percent of the then
25 remaining annuity value of his or her pension whichever is the lesser.

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

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

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

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

20 (5) If the worker leaves no surviving spouse or child, but leaves
21 a dependent or dependents, a monthly payment shall be made to each
22 dependent equal to fifty percent of the average monthly support
23 actually received by such dependent from the worker during the twelve
24 months next preceding the occurrence of the injury, but the total
25 payment to all dependents in any case shall not exceed sixty-five
26 percent of the wages of the deceased worker at the time of the death or
27 one hundred percent of the average monthly wage in the state as defined
28 in RCW 51.08.018, whichever is the lesser of the two sums. If any
29 dependent is under the age of eighteen years at the time of the
30 occurrence of the injury, the payment to such dependent shall cease

1 when such dependent reaches the age of eighteen years except such
2 payments shall continue until the dependent reaches age twenty-three
3 while permanently enrolled at a full time course in an accredited
4 school. The payment to any dependent shall cease if and when, under
5 the same circumstances, the necessity creating the dependency would
6 have ceased if the injury had not happened.

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

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