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HOUSE BILL 1894

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State of Washington

56th Legislature

1999 Regular Session

By Representative Conway

Read first time 02/09/1999. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to industrial insurance benefit errors; and  
2 amending RCW 51.32.240.

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

4 **Sec. 1.** RCW 51.32.240 and 1991 c 88 s 1 are each amended to read  
5 as follows:

6 (1) Whenever any payment of benefits under this title is made or  
7 withheld 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 be entitled to the  
11 benefits underpaid, or shall repay ((it)) the benefits overpaid and  
12 recoupment may be made from any future payments due to the recipient on  
13 any claim with the state fund or self-insurer, as the case may be. The  
14 recipient, department, or self-insurer, as the case may be, must make  
15 claim for such underpayment, repayment, or recoupment within one year  
16 of the making of any such payment or underpayment or it will be deemed  
17 any claim therefor has been waived. The director, pursuant to rules  
18 adopted in accordance with the procedures provided in the  
19 administrative procedure act, chapter 34.05 RCW, may exercise his

1 discretion to waive, in whole or in part, the amount of any such timely  
2 claim where the recovery would be against equity and good conscience.

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

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

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

36 (5) The worker, beneficiary, or other person affected thereby shall  
37 have the right to contest an order assessing an overpayment pursuant to  
38 this section in the same manner and to the same extent as provided  
39 under RCW 51.52.050 and 51.52.060. In the event such an order becomes

1 final under chapter 51.52 RCW and notwithstanding the provisions of  
2 subsections (1) through (4) of this section, the director, director's  
3 designee, or self-insurer may file with the clerk in any county within  
4 the state a warrant in the amount of the sum representing the unpaid  
5 overpayment and/or penalty plus interest accruing from the date the  
6 order became final. The clerk of the county in which the warrant is  
7 filed shall immediately designate a superior court cause number for  
8 such warrant and the clerk shall cause to be entered in the judgment  
9 docket under the superior court cause number assigned to the warrant,  
10 the name of the worker, beneficiary, or other person mentioned in the  
11 warrant, the amount of the unpaid overpayment and/or penalty plus  
12 interest accrued, and the date the warrant was filed. The amount of  
13 the warrant as docketed shall become a lien upon the title to and  
14 interest in all real and personal property of the worker, beneficiary,  
15 or other person against whom the warrant is issued, the same as a  
16 judgment in a civil case docketed in the office of such clerk. The  
17 sheriff shall then proceed in the same manner and with like effect as  
18 prescribed by law with respect to execution or other process issued  
19 against rights or property upon judgment in the superior court. Such  
20 warrant so docketed shall be sufficient to support the issuance of  
21 writs of garnishment in favor of the department or self-insurer in the  
22 manner provided by law in the case of judgment, wholly or partially  
23 unsatisfied. The clerk of the court shall be entitled to a filing fee  
24 of five dollars, which shall be added to the amount of the warrant. A  
25 copy of such warrant shall be mailed to the worker, beneficiary, or  
26 other person within three days of filing with the clerk.

27 The director, director's designee, or self-insurer may issue to any  
28 person, firm, corporation, municipal corporation, political subdivision  
29 of the state, public corporation, or agency of the state, a notice to  
30 withhold and deliver property of any kind if there is reason to believe  
31 that there is in the possession of such person, firm, corporation,  
32 municipal corporation, political subdivision of the state, public  
33 corporation, or agency of the state, property that is due, owing, or  
34 belonging to any worker, beneficiary, or other person upon whom a  
35 warrant has been served for payments due the department or self-  
36 insurer. The notice and order to withhold and deliver shall be served  
37 by certified mail accompanied by an affidavit of service by mailing or  
38 served by the sheriff of the county, or by the sheriff's deputy, or by  
39 any authorized representative of the director, director's designee, or

1 self-insurer. Any person, firm, corporation, municipal corporation,  
2 political subdivision of the state, public corporation, or agency of  
3 the state upon whom service has been made shall answer the notice  
4 within twenty days exclusive of the day of service, under oath and in  
5 writing, and shall make true answers to the matters inquired or in the  
6 notice and order to withhold and deliver. In the event there is in the  
7 possession of the party named and served with such notice and order,  
8 any property that may be subject to the claim of the department or  
9 self-insurer, such property shall be delivered forthwith to the  
10 director, the director's authorized representative, or self-insurer  
11 upon demand. If the party served and named in the notice and order  
12 fails to answer the notice and order within the time prescribed in this  
13 section, the court may, after the time to answer such order has  
14 expired, render judgment by default against the party named in the  
15 notice for the full amount, plus costs, claimed by the director,  
16 director's designee, or self-insurer in the notice. In the event that  
17 a notice to withhold and deliver is served upon an employer and the  
18 property found to be subject thereto is wages, the employer may assert  
19 in the answer all exemptions provided for by chapter 6.27 RCW to which  
20 the wage earner may be entitled.

21 This subsection shall only apply to orders assessing an overpayment  
22 which are issued on or after July 28, 1991: PROVIDED, That this  
23 subsection shall apply retroactively to all orders assessing an  
24 overpayment resulting from fraud, civil or criminal.

25 (6) Orders assessing an overpayment which are issued on or after  
26 July 28, 1991, shall include a conspicuous notice of the collection  
27 methods available to the department or self-insurer.

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