
SUBSTITUTE SENATE BILL 6317

State of Washington

58th Legislature

2004 Regular Session

By Senate Committee on Commerce & Trade (originally sponsored by Senators Honeyford, T. Sheldon, Hewitt, Mulliken and Rasmussen)

READ FIRST TIME 02/10/04.

1 AN ACT Relating to authorizing self-insurers to make claim
2 decisions and actively participate in workers' compensation claims;
3 amending RCW 51.04.020, 51.04.030, 51.04.040, 51.04.085, 51.08.040,
4 51.08.173, 51.14.110, 51.14.120, 51.14.130, 51.16.120, 51.24.030,
5 51.24.050, 51.24.060, 51.24.070, 51.24.080, 51.24.090, 51.28.010,
6 51.28.020, 51.28.030, 51.28.040, 51.28.055, 51.28.060, 51.28.070,
7 51.32.010, 51.32.040, 51.32.055, 51.32.060, 51.32.080, 51.32.095,
8 51.32.110, 51.32.130, 51.32.150, 51.32.160, 51.32.195, 51.32.210,
9 51.32.220, 51.32.225, 51.32.230, 51.32.240, 51.32.250, 51.36.010,
10 51.36.015, 51.36.020, 51.36.060, 51.36.070, 51.48.017, 51.48.040,
11 51.48.080, 51.52.050, 51.52.070, and 51.52.080; reenacting and amending
12 RCW 51.52.060; adding new sections to chapter 51.14 RCW; repealing RCW
13 51.32.190; and providing an effective date.

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

15 **Sec. 1.** RCW 51.04.020 and 2000 c 5 s 14 are each amended to read
16 as follows:

17 (1) The director shall:

18 (~~(1)~~) (a) Establish and adopt rules governing the administration

1 of this title and the periodic auditing of self-insured employers under
2 RCW 51.48.040 (4) and (5);

3 ~~((2))~~ (b) Ascertain and establish the amounts to be paid into and
4 out of the accident fund;

5 ~~((3))~~ (c) Regulate the proof of accident and extent thereof, the
6 proof of death and the proof of relationship and the extent of
7 dependency;

8 ~~((4))~~ (d) Supervise the medical, surgical, and hospital treatment
9 to the intent that it may be in all cases efficient and up to the
10 recognized standard of modern surgery;

11 ~~((5))~~ (e) Issue proper receipts for moneys received and
12 certificates for benefits accrued or accruing;

13 ~~((6))~~ (f) Investigate the cause of all serious injuries and
14 report to the governor from time to time any violations or laxity in
15 performance of protective statutes or regulations coming under the
16 observation of the department;

17 ~~((7))~~ (g) Compile statistics which will afford reliable
18 information upon which to base operations of all divisions under the
19 department;

20 ~~((8))~~ (h) Make an annual report to the governor of the workings
21 of the department;

22 ~~((9))~~ (i) Be empowered to enter into agreements with the
23 appropriate agencies of other states relating to conflicts of
24 jurisdiction where the contract of employment is in one state and
25 injuries are received in the other state, and insofar as permitted by
26 the Constitution and laws of the United States, to enter into similar
27 agreements with the provinces of Canada; and

28 ~~((10))~~ (j) Designate a medical director who is licensed under
29 chapter 18.57 or 18.71 RCW.

30 (2) Self-insured employers shall be vested with the powers and
31 duties necessary to process all aspects of industrial injury or
32 occupational disease claims of their injured workers without prior
33 approval or consent of the department subject to the provisions of this
34 title.

35 **Sec. 2.** RCW 51.04.030 and 1998 c 230 s 1 are each amended to read
36 as follows:

37 (1) The director shall supervise the providing of prompt and

1 efficient care and treatment, including care provided by physician
2 assistants governed by the provisions of chapters 18.57A and 18.71A
3 RCW, acting under a supervising physician, and including chiropractic
4 care, to workers injured during the course of their employment at the
5 least cost consistent with promptness and efficiency, without
6 discrimination or favoritism, and with as great uniformity as the
7 various and diverse surrounding circumstances and locations of
8 industries will permit and to that end shall, from time to time,
9 establish and adopt and supervise the administration of printed forms,
10 rules, (~~regulations,~~) and practices for the furnishing of such care
11 and treatment(~~(:—PROVIDED, That)~~). However, the medical coverage
12 decisions of the department do not constitute a "rule" as used in RCW
13 34.05.010(16), nor are such decisions subject to the rule-making
14 provisions of chapter 34.05 RCW except that criteria for establishing
15 medical coverage decisions shall be adopted by rule after consultation
16 with the workers' compensation advisory committee established in RCW
17 51.04.110(~~(:—PROVIDED FURTHER, That)~~). The department or self-
18 insurer, as the case may be, may recommend to an injured worker
19 particular health care services and providers where specialized
20 treatment is indicated or where cost-effective payment levels or rates
21 are obtained by the department(~~(:—AND PROVIDED FURTHER, That)~~) or
22 self-insurer. The department may enter into contracts for goods and
23 services including, but not limited to, durable medical equipment so
24 long as statewide access to quality service is maintained for injured
25 workers.

26 (2) The director shall, in consultation with interested persons,
27 establish and, in his or her discretion, periodically change as may be
28 necessary, and make available a fee schedule of the maximum charges to
29 be made by any physician, surgeon, chiropractor, hospital, druggist,
30 physicians' assistants as defined in chapters 18.57A and 18.71A RCW,
31 acting under a supervising physician or other agency or person
32 rendering services to injured workers. The department shall coordinate
33 with other state purchasers of health care services to establish as
34 much consistency and uniformity in billing and coding practices as
35 possible, taking into account the unique requirements and differences
36 between programs. No service covered under this title, including
37 services provided to injured workers, whether aliens or other injured
38 workers, who are not residing in the United States at the time of

1 receiving the services, shall be charged or paid at a rate or rates
2 exceeding those specified in such fee schedule, and no contract
3 providing for greater fees shall be valid as to the excess. The
4 establishment of such a schedule, exclusive of conversion factors, does
5 not constitute "agency action" as used in RCW 34.05.010(3), nor does
6 such a fee schedule constitute a "rule" as used in RCW 34.05.010(16).

7 (3) The director or self-insurer, as the case may be, shall make a
8 record of the commencement of every disability and the termination
9 thereof and, when bills are rendered for the care and treatment of
10 injured workers, shall approve and pay those which conform to the
11 adopted rules, (~~regulations~~) established fee schedules, and
12 practices of the director and may reject any bill or item thereof
13 incurred in violation of the principles laid down in this section or
14 the rules, regulations, or the established fee schedules and rules and
15 regulations adopted under it.

16 **Sec. 3.** RCW 51.04.040 and 1987 c 316 s 1 are each amended to read
17 as follows:

18 The director and (~~his or her~~) the director's authorized
19 assistants shall have power to issue subpoenas to enforce the
20 attendance and testimony of witnesses and the production and
21 examination of books, papers, photographs, tapes, and records before
22 the department or a self-insurer in connection with any claim made to
23 the department or a self-insurer, any billing submitted to the
24 department or a self-insurer, or the assessment or collection of
25 premiums. The director shall issue a subpoena on behalf of a self-
26 insurer upon application demonstrating a reasonable basis for the
27 issuance of a subpoena. The superior court shall have the power to
28 enforce any such subpoena by proper proceedings.

29 **Sec. 4.** RCW 51.04.085 and 1977 ex.s. c 323 s 26 are each amended
30 to read as follows:

31 The department or the self-insurer, as the case may be, may, at any
32 time, on receipt of written authorization, transmit amounts payable to
33 a claimant, beneficiary, or any supplier of goods or services to the
34 account of such person in a bank or other financial institution
35 regulated by state or federal authority.

1 provide the entire contents of the claim file unless the request is for
2 only a particular portion of the file. Any new material added to the
3 claim file after the initial request shall be provided under the same
4 terms and conditions as the initial request.

5 (2) The self-insurer shall transmit notice to the department of any
6 protest or appeal by an employee relating to the administration of an
7 industrial injury or occupational disease claim under this chapter
8 within five working days of receipt. The date that the protest or
9 appeal is received by the self-insurer shall be deemed to be the date
10 the protest is received by the department for the purpose of RCW
11 51.52.050.

12 ~~((3) The self-insurer shall submit a medical report with the
13 request for closure of a claim under this chapter.))~~

14 **Sec. 9.** RCW 51.14.130 and 1993 c 122 s 3 are each amended to read
15 as follows:

16 The self-insurer shall ~~((request allowance or denial of))~~ allow or
17 deny a claim within sixty days from the date that the claim is filed~~((-~~
18 ~~If the self-insurer fails to act within sixty days, the department~~
19 ~~shall promptly intervene and adjudicate the claim))~~ unless extended for
20 up to ninety days by notice to the worker for good cause.

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

23 (1) Self-insured employers shall issue orders encompassing their
24 claims decisions under the same circumstances and parameters and to the
25 same force and effect as orders issued by the department so long as
26 such orders conform to the requirements of RCW 51.52.050. This
27 includes but is not limited to allowance, denial and reopening of
28 claims, payment of monthly compensation, provision of medical care and
29 treatment, specification of conditions allowed, denied, or segregated
30 under the claim, closure of claims with or without award for permanent
31 disability, reduction, suspension, or denial of benefits pursuant to
32 RCW 51.32.110, and eligibility for vocational services pursuant to RCW
33 51.32.095.

34 (2) If a worker or beneficiary requests reconsideration or appeals
35 a self-insurer order, the department may reconsider the order under RCW

1 51.52.050, or may direct submission of further evidence under RCW
2 51.52.050 and 51.52.060. A subsequent order issued by the department
3 may be appealed by any aggrieved party.

4 **Sec. 11.** RCW 51.16.120 and 1984 c 63 s 1 are each amended to read
5 as follows:

6 (1) Whenever a worker has a previous bodily disability from any
7 previous injury or disease, whether known or unknown to the employer,
8 and shall suffer a further disability from injury or occupational
9 disease in employment covered by this title and become totally and
10 permanently disabled from the combined effects thereof or die when
11 death was substantially accelerated by the combined effects thereof,
12 then the experience record of an employer insured with the state fund
13 at the time of said further injury or disease shall be charged and a
14 self-insured employer shall pay directly into the reserve fund only the
15 accident cost which would have resulted solely from said further injury
16 or disease, had there been no preexisting disability, and which
17 accident cost shall be based upon an evaluation of the disability by
18 medical experts. The difference between the charge thus assessed to
19 such employer at the time of said further injury or disease and the
20 total cost of the pension reserve shall be assessed against the second
21 injury fund. The department shall pass upon the application of this
22 section in all state fund cases where benefits are paid for total
23 permanent disability or death and issue an order thereon appealable by
24 the employer. Pending outcome of such appeal the transfer or payment
25 shall be made as required by such order. In cases involving self-
26 insurers, the department shall issue an order appealable by the
27 employer passing on the application of this section within sixty days
28 of a written request by the self-insurer. However, for good cause, the
29 department may once extend the time for making the determination for an
30 additional thirty days. If the department fails to issue an order
31 passing on the application of this section within the time frame
32 specified, this section applies. When this section applies, the
33 department shall reimburse the self-insurer from the second injury fund
34 all monthly compensation paid to the worker or beneficiary beginning
35 with the first date of permanent total disability or death of the
36 worker.

1 (2) The department shall, in cases of claims of workers sustaining
2 injuries or occupational diseases in the employ of state fund
3 employers, recompute the experience record of such employers when the
4 claims of workers injured in their employ have been found to qualify
5 for payments from the second injury fund after the regular time for
6 computation of such experience records and the department may make
7 appropriate adjustments in such cases including cash refunds or credits
8 to such employers.

9 (3) To encourage employment of injured workers who are not
10 reemployed by the employer at the time of injury, the department may
11 adopt rules providing for the reduction or elimination of premiums or
12 assessments from subsequent employers of such workers and may also
13 adopt rules for the reduction or elimination of charges against such
14 employers in the event of further injury to such workers in their
15 employ.

16 **Sec. 12.** RCW 51.24.030 and 1995 c 199 s 2 are each amended to read
17 as follows:

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

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

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

35 (4) Damages recoverable by a worker or beneficiary pursuant to the
36 underinsured motorist coverage of an insurance policy shall be subject

1 to this chapter only if the owner of the policy is the employer of the
2 injured worker.

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

5 **Sec. 13.** RCW 51.24.050 and 1995 c 199 s 3 are each amended to read
6 as follows:

7 (1) An election not to proceed against the third person operates as
8 an assignment of the cause of action to the department or self-insurer,
9 as the case may be, which may prosecute or compromise the action in its
10 discretion in the name of the injured worker, beneficiary or legal
11 representative.

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

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

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

22 (a) The department or self-insurer, as the case may be, shall be
23 paid the expenses incurred in making the recovery including reasonable
24 costs of legal services;

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

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

33 (d) The injured worker or beneficiary shall be paid any remaining
34 balance.

35 (5) Thereafter no payment shall be made to or on behalf of a worker
36 or beneficiary by the department (~~and/or~~) or self-insurer, as the
37 case may be, for such injury until the amount of any further

1 compensation and benefits shall equal any such remaining balance.
2 Thereafter, such benefits shall be paid by the department (~~and/or~~) or
3 self-insurer, as the case may be, to or on behalf of the worker or
4 beneficiary as though no recovery had been made from a third person.

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

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

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

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

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

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

24 **Sec. 14.** RCW 51.24.060 and 2001 c 146 s 9 are each amended to read
25 as follows:

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

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

35 (b) The injured worker or beneficiary shall be paid twenty-five
36 percent of the balance of the award(~~(: PROVIDED, That)~~). However, in

1 the event of a compromise and settlement by the parties, the injured
2 worker or beneficiary may agree to a sum less than twenty-five percent;

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

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

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

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

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

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

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

36 (3) The department or self-insurer, as the case may be, has sole
37 discretion to compromise the amount of its lien. In deciding whether

1 or to what extent to compromise its lien, the department or self-
2 insurer shall consider at least the following:

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

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

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

11 (4) In an action under this section, the self-insurer may act on
12 behalf and for the benefit of the department to the extent of any
13 compensation and benefits paid or payable from state funds.

14 (5) It shall be the duty of the person to whom any recovery is paid
15 before distribution under this section to advise the department or
16 self-insurer, as the case may be, of the fact and amount of such
17 recovery, the costs and reasonable attorneys' fees associated with the
18 recovery, and to distribute the recovery in compliance with this
19 section.

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

1 of such clerk. The sheriff shall then proceed in the same manner and
2 with like effect as prescribed by law with respect to execution or
3 other process issued against rights or property upon judgment in the
4 superior court. Such warrant so docketed shall be sufficient to
5 support the issuance of writs of garnishment in favor of the department
6 or self-insurer, as the case may be, in the manner provided by law in
7 the case of judgment, wholly or partially unsatisfied. The clerk of
8 the court shall be entitled to a filing fee under RCW 36.18.012(10),
9 which shall be added to the amount of the warrant. A copy of such
10 warrant shall be mailed to the injured worker or beneficiary within
11 three days of filing with the clerk.

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

1 time to answer such order has expired, render judgment by default
2 against the party named in the notice for the full amount claimed by
3 the director or self-insurer in the notice together with costs. In the
4 event that a notice to withhold and deliver is served upon an employer
5 and the property found to be subject thereto is wages, the employer may
6 assert in the answer to all exemptions provided for by chapter 6.27 RCW
7 to which the wage earner may be entitled.

8 **Sec. 15.** RCW 51.24.070 and 1984 c 218 s 6 are each amended to read
9 as follows:

10 (1) The department or self-insurer, as the case may be, may require
11 the injured worker or beneficiary to exercise the right of election
12 under this chapter by serving a written demand by registered mail,
13 certified mail, or personal service on the worker or beneficiary.

14 (2) Unless an election is made within sixty days of the receipt of
15 the demand, and unless an action is instituted or settled within the
16 time granted by the department or self-insurer, the injured worker or
17 beneficiary is deemed to have assigned the action to the department or
18 self-insurer, as the case may be. The department or self-insurer shall
19 allow the worker or beneficiary at least ninety days from the election
20 to institute or settle the action. When a beneficiary is a minor child
21 the demand shall be served upon the legal custodian or guardian of such
22 beneficiary.

23 (3) If an action which has been filed is not diligently prosecuted,
24 the department or self-insurer, as the case may be, may petition the
25 court in which the action is pending for an order assigning the cause
26 of action to the department or self-insurer. Upon a sufficient showing
27 of a lack of diligent prosecution the court in its discretion may issue
28 the order.

29 (4) If the department or self-insurer has taken an assignment of
30 the third party cause of action under subsection (2) of this section,
31 the injured worker or beneficiary may, at the discretion of the
32 department or self-insurer, exercise a right of reelection and assume
33 the cause of action subject to reimbursement of litigation expenses
34 incurred by the department or self-insurer.

35 **Sec. 16.** RCW 51.24.080 and 1977 ex.s. c 85 s 6 are each amended to
36 read as follows:

1 (1) If the injured worker or beneficiary elects to seek damages
2 from the third person, notice of the election must be given to the
3 department or self-insurer, as the case may be. The notice shall be by
4 registered mail, certified mail, or personal service. If an action is
5 filed by the injured worker or beneficiary, a copy of the complaint
6 must be sent by registered mail to the department or self-insurer, as
7 the case may be.

8 (2) A return showing service of the notice on the department or
9 self-insurer shall be filed with the court but shall not be part of the
10 record except as necessary to give notice to the defendant of the lien
11 imposed by RCW 51.24.060(2).

12 **Sec. 17.** RCW 51.24.090 and 1995 c 199 s 5 are each amended to read
13 as follows:

14 (1) Any compromise or settlement of the third party cause of action
15 by the injured worker or beneficiary which results in less than the
16 entitlement under this title is void unless made with the written
17 approval of the department or self-insurer(~~(:PROVIDED, That)~~), as the
18 case may be. However, for the purposes of this chapter, "entitlement"
19 means benefits and compensation paid and estimated by the department or
20 self-insurer, as the case may be, to be paid in the future.

21 (2) If a compromise or settlement is void because of subsection (1)
22 of this section, the department or self-insurer, as the case may be,
23 may petition the court in which the action was filed for an order
24 assigning the cause of action to the department or self-insurer. If an
25 action has not been filed, the department or self-insurer may proceed
26 as provided in chapter 7.24 RCW.

27 **Sec. 18.** RCW 51.28.010 and 2001 c 231 s 1 are each amended to read
28 as follows:

29 (1) Whenever any accident occurs to any worker it shall be the duty
30 of such worker or someone in his or her behalf to forthwith report such
31 accident to his or her employer, superintendent, or supervisor in
32 charge of the work, and of the employer to at once report such accident
33 and the injury resulting therefrom to the department pursuant to RCW
34 51.28.025 where the worker has received treatment from a physician, has
35 been hospitalized, disabled from work, or has died as the apparent
36 result of such accident and injury.

1 (2) Upon receipt of such notice of accident, the department or
2 self-insurer, as the case may be, shall immediately forward to the
3 worker or his or her beneficiaries or dependents notification, in
4 nontechnical language, of their rights under this title. The notice
5 must specify the worker's right to receive health services from a
6 physician of the worker's choice under RCW 51.36.010, including
7 chiropractic services under RCW 51.36.015, and must list the types of
8 providers authorized to provide these services. The notice must be
9 given on department forms.

10 **Sec. 19.** RCW 51.28.020 and 2001 c 231 s 2 are each amended to read
11 as follows:

12 (1)((+a)) Where a worker is entitled to compensation under this
13 title he or she shall file with the department or his or her self-
14 insured employer, as the case may be, his or her application for such,
15 together with the certificate of the physician who attended him or her.
16 An application form developed by the department shall include a notice
17 specifying the worker's right to receive health services from a
18 physician of the worker's choice under RCW 51.36.010, including
19 chiropractic services under RCW 51.36.015, and listing the types of
20 providers authorized to provide these services.

21 ((+b)) (2) The physician who attended the injured worker shall
22 inform the injured worker of his or her rights under this title and
23 lend all necessary assistance in making this application for
24 compensation and such proof of other matters as required by the rules
25 of the department without charge to the worker. The department shall
26 provide physicians with a manual which outlines the procedures to be
27 followed in applications for compensation involving occupational
28 diseases, and which describes claimants' rights and responsibilities
29 related to occupational disease claims.

30 ((-2) ~~If application for compensation is made to a self-insured~~
31 ~~employer, he or she shall forthwith send a copy of the application to~~
32 ~~the department.))~~

33 **Sec. 20.** RCW 51.28.030 and 1972 ex.s. c 43 s 17 are each amended
34 to read as follows:

35 Where death results from injury the parties entitled to
36 compensation under this title, or someone in their behalf, shall make

1 application for the same to the department or self-insurer as the case
2 may be, which application must be accompanied with proof of death and
3 proof of relationship showing the parties to be entitled to
4 compensation under this title, certificates of attending physician, if
5 any, and such proof as required by the rules of the department.

6 Upon receipt of notice of accident under RCW 51.28.010, the
7 director or self-insurer, as the case may be, shall immediately forward
8 to the party or parties required to make application for compensation
9 under this section, notification on department forms, in nontechnical
10 language, of their rights under this title.

11 **Sec. 21.** RCW 51.28.040 and 1977 ex.s. c 199 s 1 are each amended
12 to read as follows:

13 If change of circumstances warrants an increase or rearrangement of
14 compensation, like application shall be made therefor to the department
15 or self-insurer, as the case may be. Where the application has been
16 granted, compensation and other benefits if in order shall be allowed
17 for periods of time up to sixty days prior to the receipt of such
18 application.

19 **Sec. 22.** RCW 51.28.055 and 2003 2nd sp.s. c 2 s 1 are each amended
20 to read as follows:

21 (1) Except as provided in subsection (2) of this section for claims
22 filed for occupational hearing loss, claims for occupational disease or
23 infection to be valid and compensable must be filed within two years
24 following the date the worker had written notice from a physician: (a)
25 Of the existence of his or her occupational disease, and (b) that a
26 claim for disability benefits may be filed. The notice shall also
27 contain a statement that the worker has two years from the date of the
28 notice to file a claim. If the employer is self-insured, the physician
29 shall file the notice with the self-insurer. If the employer is a
30 state fund employer, the physician shall file the notice with the
31 department. The department or self-insurer shall send a copy to the
32 worker ((and to the self-insurer if the worker's employer is self-
33 insured)). However, a claim is valid if it is filed within two years
34 from the date of death of the worker suffering from an occupational
35 disease.

1 (2)(a) Except as provided in (b) of this subsection, to be valid
2 and compensable, claims for hearing loss due to occupational noise
3 exposure must be filed within two years of the date of the worker's
4 last injurious exposure to occupational noise in employment covered
5 under this title or within one year of September 10, 2003, whichever is
6 later.

7 (b) A claim for hearing loss due to occupational noise exposure
8 that is not timely filed under (a) of this subsection can only be
9 allowed for medical aid benefits under chapter 51.36 RCW.

10 (3) The department may adopt rules to implement this section.

11 **Sec. 23.** RCW 51.28.060 and 1977 ex.s. c 350 s 35 are each amended
12 to read as follows:

13 A dependent shall at all times furnish the department or self-
14 insurer, as the case may be, with proof satisfactory to the
15 (~~director~~) department or self-insurer of the nature, amount and
16 extent of the contribution made by the deceased worker.

17 Proof of dependency by any beneficiary residing without the United
18 States shall be made before the nearest United States consul or
19 consular agency, under the seal of such consul or consular agent, and
20 the department or self-insurer may cause any warrant or warrants to
21 which such beneficiary is entitled to be transmitted to the beneficiary
22 through the nearest United States consul or consular agent.

23 **Sec. 24.** RCW 51.28.070 and 1990 c 209 s 2 are each amended to read
24 as follows:

25 Information contained in the claim files and records of injured
26 workers, under the provisions of this title, shall be deemed
27 confidential and shall not be open to public inspection (other than to
28 public employees in the performance of their official duties), but
29 representatives of a claimant, be it an individual or an organization,
30 may review a claim file or receive specific information therefrom upon
31 the presentation of the signed authorization of the claimant. A
32 claimant may review his or her claim file if the (~~director~~)
33 department or self-insurer, as the case may be, determines, pursuant to
34 criteria adopted by rule, that the review is in the claimant's
35 interest. Employers or their duly authorized representatives may
36 review any files of their own injured workers in connection with any

1 pending claims. Physicians treating or examining workers claiming
2 benefits under this title, or physicians giving medical advice to the
3 department or self-insurer regarding any claim may, at the discretion
4 of the department or self-insurer, inspect the claim files and records
5 of injured workers, and other persons may make such inspection, at the
6 department's or self-insurer's discretion, when such persons are
7 rendering assistance to the department or self-insurer at any stage of
8 the proceedings on any matter pertaining to the administration of this
9 title.

10 **Sec. 25.** RCW 51.32.010 and 1977 ex.s. c 350 s 37 are each amended
11 to read as follows:

12 Each worker injured in the course of his or her employment, or his
13 or her family or dependents in case of death of the worker, shall
14 receive compensation in accordance with this chapter, and, except as in
15 this title otherwise provided, such payment shall be in lieu of any and
16 all rights of action whatsoever against any person whomsoever(~~+~~
17 ~~PROVIDED, That~~)). However, if an injured worker, or the surviving
18 spouse of an injured worker shall not have the legal custody of a child
19 for, or on account of whom payments are required to be made under this
20 title, such payment or payments shall be made to the person or persons
21 having the legal custody of such child but only for the periods of time
22 after the department or self-insurer, as the case may be, has been
23 notified of the fact of such legal custody, and it shall be the duty of
24 any such person or persons receiving payments because of legal custody
25 of any child immediately to notify the department or self-insurer, as
26 the case may be, of any change in such legal custody.

27 **Sec. 26.** RCW 51.32.040 and 2003 c 379 s 27 are each amended to
28 read as follows:

29 (1) Except as provided in RCW 43.20B.720, 72.09.111, 74.20A.260,
30 and 51.32.380, no money paid or payable under this title shall, before
31 the issuance and delivery of the check or warrant, be assigned,
32 charged, or taken in execution, attached, garnished, or pass or be paid
33 to any other person by operation of law, any form of voluntary
34 assignment, or power of attorney. Any such assignment or charge is
35 void unless the transfer is to a financial institution at the request

1 of a worker or other beneficiary and made in accordance with RCW
2 51.32.045.

3 (2)(a) If any worker suffers (i) a permanent partial injury and
4 dies from some other cause than the accident which produced the injury
5 before he or she receives payment of the award for the permanent
6 partial injury or (ii) any other injury before he or she receives
7 payment of any monthly installment covering any period of time before
8 his or her death, the amount of the permanent partial disability award
9 or the monthly payment, or both, shall be paid to the surviving spouse
10 or the child or children if there is no surviving spouse. If there is
11 no surviving spouse and no child or children, the award or the amount
12 of the monthly payment shall be paid by the department or self-insurer,
13 as the case may be, and distributed consistent with the terms of the
14 decedent's will or, if the decedent dies intestate, consistent with the
15 terms of RCW 11.04.015.

16 (b) If any worker suffers an injury and dies from it before he or
17 she receives payment of any monthly installment covering time loss for
18 any period of time before his or her death, the amount of the monthly
19 payment shall be paid to the surviving spouse or the child or children
20 if there is no surviving spouse. If there is no surviving spouse and
21 no child or children, the amount of the monthly payment shall be paid
22 by the department or self-insurer, as the case may be, and distributed
23 consistent with the terms of the decedent's will or, if the decedent
24 dies intestate, consistent with the terms of RCW 11.04.015.

25 (c) Any application for compensation under this subsection (2)
26 shall be filed with the department or self-insuring employer, as the
27 case may be, within one year of the date of death. The department or
28 self-insurer may satisfy its responsibilities under this subsection (2)
29 by sending any payment due in the name of the decedent and to the last
30 known address of the decedent.

31 (3)(a) Any worker or beneficiary receiving benefits under this
32 title who is subsequently confined in, or who subsequently becomes
33 eligible for benefits under this title while confined in, any
34 institution under conviction and sentence shall have all payments of
35 the compensation canceled during the period of confinement. After
36 discharge from the institution, payment of benefits due afterward shall
37 be paid if the worker or beneficiary would, except for the provisions
38 of this subsection (3), otherwise be entitled to them.

1 (b) If any prisoner is injured in the course of his or her
2 employment while participating in a work or training release program
3 authorized by chapter 72.65 RCW and is subject to the provisions of
4 this title, he or she is entitled to payments under this title, subject
5 to the requirements of chapter 72.65 RCW, unless his or her
6 participation in the program has been canceled, or unless he or she is
7 returned to a state correctional institution, as defined in RCW
8 72.65.010(3), as a result of revocation of parole or new sentence.

9 (c) If the confined worker has any beneficiaries during the
10 confinement period during which benefits are canceled under (a) or (b)
11 of this subsection, they shall be paid directly the monthly benefits
12 which would have been paid to the worker for himself or herself and the
13 worker's beneficiaries had the worker not been confined.

14 (4) Any lump sum benefits to which a worker would otherwise be
15 entitled but for the provisions of this section shall be paid on a
16 monthly basis to his or her beneficiaries.

17 **Sec. 27.** RCW 51.32.055 and 1997 c 416 s 1 are each amended to read
18 as follows:

19 (1) One purpose of this title is to restore the injured worker as
20 nearly as possible to the condition of self-support as an able-bodied
21 worker. Claims shall be closed and benefits for permanent disability
22 shall be determined ((under the director's supervision, except as
23 otherwise authorized in subsection (9) of this section,)) only after
24 the injured worker's condition becomes fixed and stable, or the worker
25 has failed to continue to seek treatment recommended by the attending
26 physician and has failed to maintain contact with the department or the
27 self-insurer as the case may be.

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

1 insurer has made a request to the department, in the possession of or
2 under the control of the self-insurer shall be forwarded to the
3 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) of this
6 section, the self-insurer, and the department shall issue an order in
7 accordance with RCW 51.52.050 or, in the case of a self-insured
8 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) of this section, or (b) request the
11 department to issue an order in accordance with RCW 51.52.050.~~

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

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

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

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

1 ~~51.32.090 or only the payment of temporary disability compensation~~
2 ~~under RCW 51.32.090, (iii) at the time medical treatment is concluded~~
3 ~~does not involve permanent disability, (iv) is one with respect to~~
4 ~~which the department has not intervened under subsection (6) of this~~
5 ~~section, and (v) the injured worker has returned to work with the self-~~
6 ~~insured employer of record, whether at the worker's previous job or at~~
7 ~~a job that has comparable wages and benefits, the claim may be closed~~
8 ~~by the self-insurer, subject to reporting of claims to the department~~
9 ~~in a manner prescribed by department rules adopted under chapter 34.05~~
10 ~~RCW.~~

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

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

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

1 closure, you must protest in writing to the Department of Labor and
2 Industries, Olympia, within 60 days of the date you received this
3 order. The department will then review your claim and enter a further
4 determinative order."

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

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

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

36 (c) Upon closure of a claim under this subsection (9), the self-
37 insurer shall enter a written order, communicated to the worker and the
38 department self-insurance section, which contains the following

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

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

18 ~~(10) If the department receives a protest of an order issued by a~~
19 ~~self-insurer under subsections (7) through (9) of this section, the~~
20 ~~self-insurer's closure order must be held in abeyance. The department~~
21 ~~shall review the claim closure action and enter a further determinative~~
22 ~~order as provided for in RCW 51.52.050. If no protest is timely filed,~~
23 ~~the closing order issued by the self-insurer shall become final and~~
24 ~~shall have the same force and effect as a department order that has~~
25 ~~become final under RCW 51.52.050.~~

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

34 ~~(12) For the purposes of this section, "comparable wages and~~
35 ~~benefits" means wages and benefits that are at least ninety five~~
36 ~~percent of the wages and benefits received by the worker at the time of~~
37 ~~injury.))~~

1 **Sec. 28.** RCW 51.32.060 and 1993 c 521 s 2 are each amended to read
2 as follows:

3 (1) When the (~~supervisor of industrial insurance shall~~)
4 department or the self-insurer, as the case may be, determines that
5 permanent total disability results from the injury, the worker shall
6 receive monthly during the period of such disability:

7 (a) If married at the time of injury, sixty-five percent of his or
8 her wages but not less than two hundred fifteen dollars per month.

9 (b) If married with one child at the time of injury, sixty-seven
10 percent of his or her wages but not less than two hundred fifty-two
11 dollars per month.

12 (c) If married with two children at the time of injury, sixty-nine
13 percent of his or her wages but not less than two hundred eighty-three
14 dollars.

15 (d) If married with three children at the time of injury,
16 seventy-one percent of his or her wages but not less than three hundred
17 six dollars per month.

18 (e) If married with four children at the time of injury,
19 seventy-three percent of his or her wages but not less than three
20 hundred twenty-nine dollars per month.

21 (f) If married with five or more children at the time of injury,
22 seventy-five percent of his or her wages but not less than three
23 hundred fifty-two dollars per month.

24 (g) If unmarried at the time of the injury, sixty percent of his or
25 her wages but not less than one hundred eighty-five dollars per month.

26 (h) If unmarried with one child at the time of injury, sixty-two
27 percent of his or her wages but not less than two hundred twenty-two
28 dollars per month.

29 (i) If unmarried with two children at the time of injury,
30 sixty-four percent of his or her wages but not less than two hundred
31 fifty-three dollars per month.

32 (j) If unmarried with three children at the time of injury,
33 sixty-six percent of his or her wages but not less than two hundred
34 seventy-six dollars per month.

35 (k) If unmarried with four children at the time of injury,
36 sixty-eight percent of his or her wages but not less than two hundred
37 ninety-nine dollars per month.

1 (1) If unmarried with five or more children at the time of injury,
2 seventy percent of his or her wages but not less than three hundred
3 twenty-two dollars per month.

4 (2) For any period of time where both husband and wife are entitled
5 to compensation as temporarily or totally disabled workers, only that
6 spouse having the higher wages of the two shall be entitled to claim
7 their child or children for compensation purposes.

8 (3) In case of permanent total disability, if the character of the
9 injury is such as to render the worker so physically helpless as to
10 require the hiring of the services of an attendant, the department
11 shall make monthly payments to such attendant for such services as long
12 as such requirement continues, but such payments shall not obtain or be
13 operative while the worker is receiving care under or pursuant to the
14 provisions of chapter 51.36 RCW and RCW 51.04.105.

15 (4) Should any further accident result in the permanent total
16 disability of an injured worker, he or she shall receive the pension to
17 which he or she would be entitled, notwithstanding the payment of a
18 lump sum for his or her prior injury.

19 (5) In no event shall the monthly payments provided in this section
20 exceed the applicable percentage of the average monthly wage in the
21 state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

22
23
24
25
26
27 The limitations under this subsection shall not apply to the
28 payments provided for in subsection (3) of this section.

29 (6) In the case of new or reopened claims, if the (~~supervisor of~~
30 ~~industrial insurance~~) department or the self-insurer, as the case may
31 be, determines that, at the time of filing or reopening, the worker is
32 voluntarily retired and is no longer attached to the work force,
33 benefits shall not be paid under this section.

34 (7) The benefits provided by this section are subject to
35 modification under RCW 51.32.067.

1	Of arm at any point from below the elbow	
2	joint distal to the insertion of the	
3	biceps tendon to and including	
4	mid-metacarpal amputation of the	
5	hand	48,600.00
6	Of all fingers except the thumb at	
7	metacarpophalangeal joints	29,160.00
8	Of thumb at metacarpophalangeal joint or	
9	with resection of carpometacarpal	
10	bone	19,440.00
11	Of thumb at interphalangeal joint	9,720.00
12	Of index finger at metacarpophalangeal	
13	joint or with resection of metacarpal	
14	bone	12,150.00
15	Of index finger at proximal	
16	interphalangeal joint	9,720.00
17	Of index finger at distal interphalangeal	
18	joint	5,346.00
19	Of middle finger at metacarpophalangeal	
20	joint or with resection of metacarpal	
21	bone	9,720.00
22	Of middle finger at proximal	
23	interphalangeal joint	7,776.00
24	Of middle finger at distal interphalangeal	
25	joint	4,374.00
26	Of ring finger at metacarpophalangeal	
27	joint or with resection of metacarpal	
28	bone	4,860.00
29	Of ring finger at proximal interphalangeal	
30	joint	3,888.00
31	Of ring finger at distal interphalangeal	
32	joint	2,430.00
33	Of little finger at metacarpophalangeal	
34	joint or with resection of metacarpal	
35	bone	2,430.00
36	Of little finger at proximal interphalangeal	
37	joint	1,944.00

1	Of little finger at distal interphalangeal	
2	joint.....	972.00
3	MISCELLANEOUS	
4	Loss of one eye by enucleation	21,600.00
5	Loss of central visual acuity in one eye ...	18,000.00
6	Complete loss of hearing in both ears	43,200.00
7	Complete loss of hearing in one ear	7,200.00

8 (b) Beginning on July 1, 1993, compensation under this subsection
9 shall be computed as follows:

10 (i) Beginning on July 1, 1993, the compensation amounts for the
11 specified disabilities listed in (a) of this subsection shall be
12 increased by thirty-two percent; and

13 (ii) Beginning on July 1, 1994, and each July 1 thereafter, the
14 compensation amounts for the specified disabilities listed in (a) of
15 this subsection, as adjusted under (b)(i) of this subsection, shall be
16 readjusted to reflect the percentage change in the consumer price
17 index, calculated as follows: The index for the calendar year
18 preceding the year in which the July calculation is made, to be known
19 as "calendar year A," is divided by the index for the calendar year
20 preceding calendar year A, and the resulting ratio is multiplied by the
21 compensation amount in effect on June 30 immediately preceding the July
22 1st on which the respective calculation is made. For the purposes of
23 this subsection, "index" means the same as the definition in RCW
24 2.12.037(1).

25 (2) Compensation for amputation of a member or part thereof at a
26 site other than those specified in subsection (1) of this section, and
27 for loss of central visual acuity and loss of hearing other than
28 complete, shall be in proportion to that which such other amputation or
29 partial loss of visual acuity or hearing most closely resembles and
30 approximates. Compensation shall be calculated based on the adjusted
31 schedule of compensation in effect for the respective time period as
32 prescribed in subsection (1) of this section.

33 (3)(a) Compensation for any other permanent partial disability not
34 involving amputation shall be in the proportion which the extent of
35 such other disability, called unspecified disability, shall bear to the
36 disabilities specified in subsection (1) of this section, which most
37 closely resembles and approximates in degree of disability such other

1 disability, and compensation for any other unspecified permanent
2 partial disability shall be in an amount as measured and compared to
3 total bodily impairment. To reduce litigation and establish more
4 certainty and uniformity in the rating of unspecified permanent partial
5 disabilities, the department shall enact rules having the force of law
6 classifying such disabilities in the proportion which the department
7 shall determine such disabilities reasonably bear to total bodily
8 impairment. In enacting such rules, the department shall give
9 consideration to, but need not necessarily adopt, any nationally
10 recognized medical standards or guides for determining various bodily
11 impairments.

12 (b) Until July 1, 1993, for purposes of calculating monetary
13 benefits under (a) of this subsection, the amount payable for total
14 bodily impairment shall be deemed to be ninety thousand dollars.
15 Beginning on July 1, 1993, for purposes of calculating monetary
16 benefits under (a) of this subsection, the amount payable for total
17 bodily impairment shall be adjusted as follows:

18 (i) Beginning on July 1, 1993, the amount payable for total bodily
19 impairment under this section shall be increased to one hundred
20 eighteen thousand eight hundred dollars; and

21 (ii) Beginning on July 1, 1994, and each July 1 thereafter, the
22 amount payable for total bodily impairment prescribed in (b)(i) of this
23 subsection shall be adjusted as provided in subsection (1)(b)(ii) of
24 this section.

25 (c) Until July 1, 1993, the total compensation for all unspecified
26 permanent partial disabilities resulting from the same injury shall not
27 exceed the sum of ninety thousand dollars. Beginning on July 1, 1993,
28 total compensation for all unspecified permanent partial disabilities
29 resulting from the same injury shall not exceed a sum calculated as
30 follows:

31 (i) Beginning on July 1, 1993, the sum shall be increased to one
32 hundred eighteen thousand eight hundred dollars; and

33 (ii) Beginning on July 1, 1994, and each July 1 thereafter, the sum
34 prescribed in (b)(i) of this subsection shall be adjusted as provided
35 in subsection (1)(b)(ii) of this section.

36 (4) If permanent partial disability compensation is followed by
37 permanent total disability compensation, any portion of the permanent
38 partial disability compensation which exceeds the amount that would

1 have been paid the injured worker if permanent total disability
2 compensation had been paid in the first instance, shall be deducted
3 from the pension reserve of such injured worker and his or her monthly
4 compensation payments shall be reduced accordingly.

5 (5) Should a worker receive an injury to a member or part of his or
6 her body already, from whatever cause, permanently partially disabled,
7 resulting in the amputation thereof or in an aggravation or increase in
8 such permanent partial disability but not resulting in the permanent
9 total disability of such worker, his or her compensation for such
10 partial disability shall be adjudged with regard to the previous
11 disability of the injured member or part and the degree or extent of
12 the aggravation or increase of disability thereof.

13 (6) When the compensation provided for in subsections (1) through
14 (3) of this section exceeds three times the average monthly wage in the
15 state as computed under the provisions of RCW 51.08.018, payment shall
16 be made in monthly payments in accordance with the schedule of
17 temporary total disability payments set forth in RCW 51.32.090 until
18 such compensation is paid to the injured worker in full, except that
19 the first monthly payment shall be in an amount equal to three times
20 the average monthly wage in the state as computed under the provisions
21 of RCW 51.08.018, and interest shall be paid at the rate of eight
22 percent on the unpaid balance of such compensation commencing with the
23 second monthly payment. However, upon application of the injured
24 worker or survivor the monthly payment may be converted, in whole or in
25 part, into a lump sum payment, in which event the monthly payment shall
26 cease in whole or in part. Such conversion may be made only upon
27 written application of the injured worker or survivor to the department
28 or self-insurer, as the case may be, and shall rest in the discretion
29 of the department or self-insurer, as the case may be, depending upon
30 the merits of each individual application. Upon the death of a worker
31 all unpaid installments accrued shall be paid according to the payment
32 schedule established prior to the death of the worker to the widow or
33 widower, or if there is no widow or widower surviving, to the dependent
34 children of such claimant, and if there are no such dependent children,
35 then to such other dependents as defined by this title.

36 (7) Awards payable under this section are governed by the schedule
37 in effect on the date of injury.

1 **Sec. 30.** RCW 51.32.095 and 1999 c 110 s 1 are each amended to read
2 as follows:

3 (1) One of the primary purposes of this title is to enable the
4 injured worker to become employable at gainful employment. To this
5 end, the department or self-insurers, as the case may be, shall utilize
6 the services of individuals and organizations, public or private, whose
7 experience, training, and interests in vocational rehabilitation and
8 retraining qualify them to lend expert assistance (~~((to the supervisor
9 of industrial insurance))~~) in such programs of vocational rehabilitation
10 as may be reasonable to make the worker employable consistent with his
11 or her physical and mental status. (~~((Where, after evaluation and
12 recommendation by such individuals or organizations and prior to final
13 evaluation of the worker's permanent disability and in the sole opinion
14 of the supervisor or supervisor's designee, whether or not medical
15 treatment has been concluded, vocational rehabilitation is both
16 necessary and likely to enable the injured worker to become employable
17 at gainful employment, the supervisor or supervisor's designee may, in
18 his or her sole discretion, pay or, if the employer is a self-insurer,
19 direct the self-insurer to pay the cost as provided in subsection (3)
20 of this section.))~~) The department or self-insurer, as the case may be,
21 may pay the costs as provided in subsection (3) of this section if
22 vocational rehabilitation is both necessary and likely to enable the
23 injured worker to become employable at gainful employment. Such costs
24 may be approved before final evaluation of the worker's permanent
25 disability, whether or not medical treatment has been concluded.

26 (2) When in the (~~((sole))~~) discretion of the (~~((supervisor or the
27 supervisor's designee))~~) department or self-insurer, as the case may be,
28 vocational rehabilitation is both necessary and likely to make the
29 worker employable at gainful employment, then the following order of
30 priorities shall be used:

31 (a) Return to the previous job with the same employer;

32 (b) Modification of the previous job with the same employer
33 including transitional return to work;

34 (c) A new job with the same employer in keeping with any
35 limitations or restrictions;

36 (d) Modification of a new job with the same employer including
37 transitional return to work;

38 (e) Modification of the previous job with a new employer;

1 (f) A new job with a new employer or self-employment based upon
2 transferable skills;

3 (g) Modification of a new job with a new employer;

4 (h) A new job with a new employer or self-employment involving on-
5 the-job training;

6 (i) Short-term retraining and job placement.

7 (3)(a) Except as provided in (b) of this subsection, costs for
8 vocational rehabilitation benefits allowed (~~((by the supervisor or
9 supervisor's designee))~~) under subsection (1) of this section may
10 include the cost of books, tuition, fees, supplies, equipment,
11 transportation, child or dependent care, and other necessary expenses
12 for any such worker in an amount not to exceed three thousand dollars
13 in any fifty-two week period (~~((except as authorized by RCW 51.60.060))~~),
14 and the cost of continuing the temporary total disability compensation
15 under RCW 51.32.090 while the worker is actively and successfully
16 undergoing a formal program of vocational rehabilitation.

17 (b) Beginning with vocational rehabilitation plans approved on or
18 after July 1, 1999, costs for vocational rehabilitation benefits
19 allowed (~~((by the supervisor or supervisor's designee))~~) under subsection
20 (1) of this section may include the cost of books, tuition, fees,
21 supplies, equipment, child or dependent care, and other necessary
22 expenses for any such worker in an amount not to exceed four thousand
23 dollars in any fifty-two week period (~~((except as authorized by RCW
24 51.60.060))~~), and the cost of transportation and continuing the
25 temporary total disability compensation under RCW 51.32.090 while the
26 worker is actively and successfully undergoing a formal program of
27 vocational rehabilitation.

28 (c) The expenses allowed under (a) or (b) of this subsection may
29 include training fees for on-the-job training and the cost of
30 furnishing tools and other equipment necessary for self-employment or
31 reemployment. However, compensation or payment of retraining with job
32 placement expenses under (a) or (b) of this subsection may not be
33 authorized for a period of more than fifty-two weeks, except that such
34 period may, in the sole discretion of the (~~((supervisor after his or her
35 review))~~) department or self-insurer, as the case may be, be extended
36 for an additional fifty-two weeks or portion thereof by written order
37 of the (~~((supervisor))~~) department or self-insurer, as the case may be.

1 (d) In cases where the worker is required to reside away from his
2 or her customary residence, the reasonable cost of board and lodging
3 shall also be paid.

4 (e) Costs paid under this subsection shall be chargeable to the
5 employer's cost experience or shall be paid by the self-insurer as the
6 case may be.

7 (4) In addition to the vocational rehabilitation expenditures
8 provided for under subsection (3) of this section, an additional five
9 thousand dollars may, upon authorization of the (~~supervisor or the~~
10 ~~supervisor's designee~~) department or self-insurer, as the case may be,
11 be expended for: (a) Accommodations for an injured worker that are
12 medically necessary for the worker to participate in an approved
13 retraining plan; and (b) accommodations necessary to perform the
14 essential functions of an occupation in which an injured worker is
15 seeking employment, consistent with the retraining plan or the
16 recommendations of a vocational evaluation. The injured worker's
17 attending physician must verify the necessity of the modifications or
18 accommodations. The total expenditures authorized in this subsection
19 and the expenditures authorized under RCW 51.32.250 shall not exceed
20 five thousand dollars.

21 (5) The department shall establish criteria to monitor the quality
22 and effectiveness of rehabilitation services provided by the
23 individuals and organizations used under subsection (1) of this
24 section. The state fund shall make referrals for vocational
25 rehabilitation services based on these performance criteria.

26 (6) The department shall engage in, where feasible and cost-
27 effective, a cooperative program with the state employment security
28 department to provide job placement services under this section.

29 (~~The benefits in this section shall be provided for the~~
30 ~~injured workers of self-insured employers.~~) Self-insurers shall
31 (~~report both benefits provided and benefits denied under this section~~
32 ~~in the manner prescribed by the department by rule adopted under~~
33 ~~chapter 34.05 RCW~~) issue an order providing or denying benefits under
34 this section. The order shall state, in bold-faced type of at least
35 ten-point font, that such order becomes final within fifteen days from
36 the date the order is communicated to the parties unless a written
37 protest is filed with the director of the department of labor and
38 industries in Olympia. The self-insurer's order may not be appealed to

1 the board of industrial insurance appeals. If a worker timely protests
2 an order issued by a self-insured employer under this section, the
3 director may(, in his or her sole discretion and upon his or her own
4 initiative or at any time that a dispute arises under this section,)
5 promptly make such inquiries as circumstances require ((and)), take
6 such other action as he or she considers will properly determine the
7 matter and protect the rights of the parties, and determine whether, in
8 the director's sole discretion, vocational rehabilitation is both
9 necessary and likely to make the worker employable at gainful
10 employment. If the director does not make a determination reversing or
11 modifying a self-insured employer's order within thirty calendar days
12 of the worker's protest, the director shall be deemed to have exercised
13 his or her discretion and the self-insured employer's order shall be
14 deemed affirmed.

15 (8) Except as otherwise provided in this section, the benefits
16 provided for in this section are available to any otherwise eligible
17 worker regardless of the date of industrial injury. However, claims
18 shall not be reopened solely for vocational rehabilitation purposes.

19 **Sec. 31.** RCW 51.32.110 and 1997 c 325 s 3 are each amended to read
20 as follows:

21 (1) Any worker entitled to receive any benefits or claiming such
22 under this title shall, if requested by the department or self-insurer,
23 submit himself or herself for medical examination, at a time and from
24 time to time, at a place reasonably convenient for the worker and as
25 may be provided by the rules of the department. An injured worker,
26 whether an alien or other injured worker, who is not residing in the
27 United States at the time that a medical examination is requested may
28 be required to submit to an examination at any location in the United
29 States determined by the department or self-insurer.

30 (2) If the worker refuses to submit to medical examination, or
31 obstructs the same, or, if any injured worker shall persist in
32 unsanitary or injurious practices which tend to imperil or retard his
33 or her recovery, or shall refuse to submit to such medical or surgical
34 treatment as is reasonably essential to his or her recovery or refuse
35 or obstruct evaluation or examination for the purpose of vocational
36 rehabilitation or does not cooperate in reasonable efforts at such
37 rehabilitation, the department or the self-insurer (~~upon approval by~~

1 ~~the department~~)), as the case may be, with notice to the worker may
2 suspend any further action on any claim of such worker so long as such
3 refusal, obstruction, noncooperation, or practice continues and reduce,
4 suspend, or deny any compensation for such period(~~(+ PROVIDED, That)~~).
5 However, the department or the self-insurer shall not suspend any
6 further action on any claim of a worker or reduce, suspend, or deny any
7 compensation if a worker has good cause for refusing to submit to or to
8 obstruct any examination, evaluation, treatment, or practice requested
9 by the department or self-insurer or required under this section.

10 (3) If the worker necessarily incurs traveling expenses in
11 attending the examination pursuant to the request of the department or
12 the self-insurer, such traveling expenses shall be repaid to him or her
13 out of the accident fund upon proper voucher and audit or shall be
14 repaid by the self-insurer, as the case may be.

15 (4)(a) If the medical examination required by this section causes
16 the worker to be absent from his or her work without pay:

17 (i) In the case of a worker insured by the department, the worker
18 shall be paid compensation out of the accident fund in an amount equal
19 to his or her usual wages for the time lost from work while attending
20 the medical examination; or

21 (ii) In the case of a worker of a self-insurer, the self-insurer
22 shall pay the worker an amount equal to his or her usual wages for the
23 time lost from work while attending the medical examination.

24 (b) This subsection (4) shall apply prospectively to all claims
25 regardless of the date of injury.

26 **Sec. 32.** RCW 51.32.130 and 1961 c 23 s 51.32.130 are each amended
27 to read as follows:

28 In case of death or permanent total disability, the monthly payment
29 provided may be converted, in whole or in part, into a lump sum
30 payment, not in any case to exceed eight thousand five hundred dollars,
31 equal or proportionate, as the case may be, to the value of the annuity
32 then remaining, to be fixed and certified by the state insurance
33 commissioner, in which event the monthly payments shall cease in whole
34 or in part accordingly or proportionately. Such conversion may be made
35 only upon written application (in case of minor children the
36 application may be by either parent) to the department or self-insurer,
37 as the case may be, and shall rest in the discretion of the department

1 or self-insurer, as the case may be. Within the rule aforesaid the
2 amount and value of the lump sum payment may be agreed upon between the
3 department or self-insurer, as the case may be, and applicant. In the
4 event any payment shall be due to an alien residing in a foreign
5 country, the department or self-insurer, as the case may be, may settle
6 the same by making a lump sum payment in such amount as may be agreed
7 to by such alien, not to exceed fifty percent of the value of the
8 annuity then remaining.

9 ~~((Nothing herein shall preclude))~~ The department ~~((from making, and
10 authority is hereby given it to))~~ or self-insurer, as the case may be,
11 may make, on its own motion, lump sum payments equal or proportionate,
12 as the case may be, to the value of the annuity then remaining, in full
13 satisfaction of claims due to dependents.

14 **Sec. 33.** RCW 51.32.150 and 1977 ex.s. c 323 s 18 are each amended
15 to read as follows:

16 If a beneficiary ~~((shall))~~ resides or moves out of the state, the
17 department or self-insurer, as the case may be, may, with the written
18 consent of the beneficiary, convert any monthly payments provided for
19 such cases into a lump sum payment (not in any case to exceed the value
20 of the annuity then remaining, to be fixed and certified by the state
21 insurance commissioner, but in no case to exceed the sum provided in
22 RCW 51.32.130 ~~((as now or hereafter amended))~~).

23 **Sec. 34.** RCW 51.32.160 and 1995 c 253 s 2 are each amended to read
24 as follows:

25 (1)(a) If aggravation, diminution, or termination of disability
26 takes place, the ~~((director))~~ department or self-insurer, as the case
27 may be, may, upon the application of the beneficiary to the department
28 or self-insurer, as the case may be, made within seven years from the
29 date the first closing order becomes final, or at any time upon ~~((his~~
30 ~~or her own))~~ the director's or self-insurer's motion, as the case may
31 be, readjust the rate of compensation in accordance with the rules in
32 this section provided for the same, or in a proper case terminate the
33 payment~~((: PROVIDED, That))~~. However, the ~~((director))~~ department or
34 self-insurer, as the case may be, may, upon application of the worker
35 made at any time, provide proper and necessary medical and surgical
36 services as authorized under RCW 51.36.010. The department shall

1 promptly mail a copy of the application to the state fund employer at
2 the employer's last known address as shown by the records of the
3 department.

4 (b) "Closing order" as used in this section means an order based on
5 factors which include medical recommendation, advice, ~~((or))~~
6 examination, or an order closing the claim when the worker has failed
7 to continue to seek treatment recommended by the attending physician
8 and has failed to maintain contact with the department or self-insurer,
9 as the case may be.

10 (c) Applications for benefits where the claim has been closed
11 without medical recommendation, advice, or examination are not subject
12 to the seven year limitation of this section. The preceding sentence
13 shall not apply to any closing order issued prior to July 1, 1981.
14 First closing orders issued between July 1, 1981, and July 1, 1985,
15 shall, for the purposes of this section only, be deemed issued on July
16 1, 1985. The time limitation of this section shall be ten years in
17 claims involving loss of vision or function of the eyes.

18 (d) If an order denying an application to reopen filed on or after
19 July 1, 1988, is not issued within ninety days of receipt of such
20 application by the self-insured employer or the department, as the case
21 may be, such application shall be deemed granted. However, for good
22 cause, the department or self-insurer, as the case may be, may extend
23 the time for making the final determination on the application for an
24 additional sixty days.

25 (2) If a worker receiving a pension for total disability returns to
26 gainful employment for wages, the director or self-insurer, as the case
27 may be, may suspend or terminate the rate of compensation established
28 for the disability without producing medical evidence that shows that
29 a diminution of the disability has occurred.

30 (3) No act done or ordered to be done by ~~((the director, or))~~ the
31 department ~~((prior to))~~ or the self-insurer before the ~~((signing and~~
32 ~~filing in the matter))~~ issuing of a written order for such readjustment
33 shall be grounds for such readjustment.

34 **Sec. 35.** RCW 51.32.195 and 1987 c 290 s 1 are each amended to read
35 as follows:

36 On any industrial injury claim where ~~((the))~~ a self-insured
37 ~~((employer or injured worker has requested a determination by the~~

1 ~~department))~~ employer's order has been protested, the self-insurer must
2 submit (~~all medical reports and any other specified information not~~
3 ~~previously submitted~~) the claim file to the department. When the
4 department requests information from a self-insurer by certified mail,
5 the self-insurer shall submit all information in its possession
6 concerning a claim within ten working days from the date of receipt of
7 such certified notice.

8 **Sec. 36.** RCW 51.32.210 and 1977 ex.s. c 350 s 55 are each amended
9 to read as follows:

10 Claims of injured workers (~~of employers who have secured the~~
11 ~~payment of compensation by insuring with the department~~) shall be
12 promptly acted upon by the department or self-insurer, as the case may
13 be. Where temporary disability compensation is payable, the first
14 payment thereof shall be mailed within fourteen days after receipt of
15 the claim at the department (~~its offices in Olympia~~) or self-insurer,
16 as the case may be, and shall continue at regular semimonthly
17 intervals. The payment of this or any other benefits under this title,
18 prior to the entry of an order (~~by the department~~) in accordance with
19 RCW 51.52.050 (~~as now or hereafter amended~~), shall be not considered
20 a binding determination of the obligations of the department or self-
21 insurer, as the case may be, under this title. The acceptance of
22 compensation by the worker or his or her beneficiaries prior to such
23 order shall likewise not be considered a binding determination of their
24 rights under this title.

25 **Sec. 37.** RCW 51.32.220 and 1982 c 63 s 19 are each amended to read
26 as follows:

27 (1) For persons under the age of sixty-five receiving compensation
28 for temporary or permanent total disability pursuant to the provisions
29 of chapter 51.32 RCW, such compensation shall be reduced by an amount
30 equal to the benefits payable under the federal old-age, survivors and
31 disability insurance act as now or hereafter amended not to exceed the
32 amount of the reduction established pursuant to 42 USC 424a. However,
33 such reduction shall not apply when the combined compensation provided
34 pursuant to chapter 51.32 RCW and the federal old-age, survivors and
35 disability insurance act is less than the total benefits to which the
36 federal reduction would apply, pursuant to 42 USC 424a. Where any

1 person described in this section refuses to authorize the release of
2 information concerning the amount of benefits payable under said
3 federal act the department(~~(-s)~~) or self-insurer's estimate, as the
4 case may be, of said amount shall be deemed to be correct unless and
5 until the actual amount is established and no adjustment shall be made
6 for any period of time covered by any such refusal.

7 (2) Any reduction under subsection (1) of this section shall be
8 effective the month following the month in which the department or
9 self-insurer, as the case may be, is notified by the federal social
10 security administration that the person is receiving disability
11 benefits under the federal old-age, survivors and disability insurance
12 act(~~(- PROVIDED, That)~~). However, in the event of an overpayment of
13 benefits the department or self-insurer, as the case may be, may not
14 recover more than the overpayments for the six months immediately
15 preceding the date the department or self-insurer notifies the worker
16 that an overpayment has occurred(~~(- PROVIDED FURTHER, That)~~). Upon
17 determining that there has been an overpayment, the department or self-
18 insurer, as the case may be, shall immediately notify the person who
19 received the overpayment that he or she shall be required to make
20 repayment pursuant to this section and RCW 51.32.230.

21 (3) Recovery of any overpayment must be taken from future temporary
22 or permanent total disability benefits or permanent partial disability
23 benefits provided by this title. In the case of temporary or permanent
24 total disability benefits, the recovery shall not exceed twenty-five
25 percent of the monthly amount due from the department or self-insurer,
26 as the case may be, or one-sixth of the total overpayment, whichever is
27 the lesser.

28 (4) No reduction may be made unless the worker receives notice of
29 the reduction prior to the month in which the reduction is made.

30 (5) In no event shall the reduction reduce total benefits to less
31 than the greater amount the worker may be entitled to under this title
32 or the federal old-age, survivors and disability insurance act.

33 (6) The (~~(director)~~) department or self-insurer, as the case may
34 be, pursuant to rules adopted in accordance with the procedures
35 provided in the administrative procedure act, chapter 34.05 RCW, may
36 exercise (~~(his)~~) discretion to waive, in whole or in part, the amount
37 of any overpayment where the recovery would be against equity and good
38 conscience.

1 (7) The amendment in subsection (1) of this section by chapter 63,
2 Laws of 1982 raising the age limit during which the reduction shall be
3 made from age sixty-two to age sixty-five shall apply with respect to
4 workers whose effective entitlement to total disability compensation
5 begins after January 1, 1983.

6 **Sec. 38.** RCW 51.32.225 and 1986 c 59 s 5 are each amended to read
7 as follows:

8 (1) For persons receiving compensation for temporary or permanent
9 total disability under this title, the compensation shall be reduced by
10 the department or self-insurer, as the case may be, to allow an offset
11 for social security retirement benefits payable under the federal
12 social security, old age survivors, and disability insurance act, 42
13 U.S.C. This reduction shall not apply to any worker who is receiving
14 permanent total disability benefits prior to July 1, 1986.

15 (2) Reductions for social security retirement benefits under this
16 section shall comply with the procedures in RCW 51.32.220 (1) through
17 (6), except those that relate to computation, and with any other
18 procedures established by the department to administer this section.

19 (3) Any reduction in compensation made under chapter 58, Laws of
20 1986, shall be made before the reduction established in this section.

21 **Sec. 39.** RCW 51.32.230 and 1979 ex.s. c 151 s 2 are each amended
22 to read as follows:

23 Notwithstanding any other provisions of law, any overpayments
24 previously recovered under the provisions of RCW 51.32.220 (~~(as now or~~
25 ~~hereafter amended)~~) shall be limited to six months' overpayments.
26 Where greater recovery has already been made, the director(~~(, in his)~~)
27 or the self-insurer, as the case may be, has the discretion(, may) to
28 make restitution in those cases where an extraordinary hardship has
29 been created.

30 **Sec. 40.** RCW 51.32.240 and 2001 c 146 s 10 are each amended to
31 read as follows:

32 (1) Whenever any payment of benefits under this title is made
33 because of clerical error, mistake of identity, innocent
34 misrepresentation by or on behalf of the recipient thereof mistakenly
35 acted upon, or any other circumstance of a similar nature, all not

1 induced by fraud, the recipient thereof shall repay it and recoupment
2 may be made from any future payments due to the recipient on any claim
3 with the state fund or self-insurer, as the case may be. The
4 department or self-insurer, as the case may be, must make claim for
5 such repayment or recoupment within one year of the making of any such
6 payment or it will be deemed any claim therefor has been waived. The
7 ((director)) department or self-insurer, as the case may be, pursuant
8 to rules adopted in accordance with the procedures provided in the
9 administrative procedure act, chapter 34.05 RCW, may exercise ((his))
10 discretion to waive, in whole or in part, the amount of any such timely
11 claim where the recovery would be against equity and good conscience.

12 (2) Whenever the department or self-insurer, as the case may be,
13 fails to pay benefits because of clerical error, mistake of identity,
14 or innocent misrepresentation, all not induced by recipient fraud, the
15 recipient may request an adjustment of benefits to be paid from the
16 state fund or by the self-insurer, as the case may be, subject to the
17 following:

18 (a) The recipient must request an adjustment in benefits within one
19 year from the date of the incorrect payment, whether the payment was
20 made by order or otherwise, or it will be deemed any claim therefore
21 has been waived.

22 (b) The recipient may not seek an adjustment of benefits because of
23 adjudicator error whether the payment was made by order or otherwise.
24 "Adjudicator error" includes the failure to consider information in the
25 claim file, failure to secure adequate information, or an error in
26 judgment.

27 (3) Whenever the department or self-insurer issues an order
28 rejecting a claim for benefits paid pursuant to RCW ((51.32.190 or))
29 51.32.210, after payment for temporary disability benefits has been
30 paid ((by a self-insurer pursuant to RCW 51.32.190(3) or by the
31 department pursuant to RCW 51.32.210)), the recipient thereof shall
32 repay such benefits and recoupment may be made from any future payments
33 due to the recipient on any claim with the state fund or self-insurer,
34 as the case may be. The ((director)) department or self-insurer, as
35 the case may be, under rules adopted in accordance with the procedures
36 provided in the administrative procedure act, chapter 34.05 RCW, may
37 exercise discretion to waive, in whole or in part, the amount of any

1 such payments where the recovery would be against equity and good
2 conscience.

3 (4) Whenever any payment of benefits under this title has been made
4 pursuant to an adjudication by the department or self-insurer or by
5 order of the board or any court and timely appeal therefrom has been
6 made where the final decision is that any such payment was made
7 pursuant to an erroneous adjudication, the recipient thereof shall
8 repay it and recoupment may be made from any future payments due to the
9 recipient on any claim with the state fund or self-insurer, as the case
10 may be. The (~~director~~) department or self-insurer, as the case may
11 be, pursuant to rules adopted in accordance with the procedures
12 provided in the administrative procedure act, chapter 34.05 RCW, may
13 exercise (~~his~~) discretion to waive, in whole or in part, the amount
14 of any such payments where the recovery would be against equity and
15 good conscience.

16 (5) Whenever any payment of benefits under this title has been
17 induced by fraud the recipient thereof shall repay any such payment
18 together with a penalty of fifty percent of the total of any such
19 payments and the amount of such total sum may be recouped from any
20 future payments due to the recipient on any claim with the state fund
21 or self-insurer against whom the fraud was committed, as the case may
22 be, and the amount of such penalty shall be placed in the supplemental
23 pension fund. Such repayment or recoupment must be demanded or ordered
24 within three years of the discovery of the fraud.

25 (6) The worker, beneficiary, or other person affected thereby shall
26 have the right to contest an order assessing an overpayment pursuant to
27 this section in the same manner and to the same extent as provided
28 under RCW 51.52.050 and 51.52.060. In the event such an order becomes
29 final under chapter 51.52 RCW and notwithstanding the provisions of
30 subsections (1) through (5) of this section, the (~~director, director's~~
31 ~~designee,~~) department or self-insurer, as the case may be, may file
32 with the clerk in any county within the state a warrant in the amount
33 of the sum representing the unpaid overpayment and/or penalty plus
34 interest accruing from the date the order became final. The clerk of
35 the county in which the warrant is filed shall immediately designate a
36 superior court cause number for such warrant and the clerk shall cause
37 to be entered in the judgment docket under the superior court cause
38 number assigned to the warrant, the name of the worker, beneficiary, or

1 other person mentioned in the warrant, the amount of the unpaid
2 overpayment and/or penalty plus interest accrued, and the date the
3 warrant was filed. The amount of the warrant as docketed shall become
4 a lien upon the title to and interest in all real and personal property
5 of the worker, beneficiary, or other person against whom the warrant is
6 issued, the same as a judgment in a civil case docketed in the office
7 of such clerk. The sheriff shall then proceed in the same manner and
8 with like effect as prescribed by law with respect to execution or
9 other process issued against rights or property upon judgment in the
10 superior court. Such warrant so docketed shall be sufficient to
11 support the issuance of writs of garnishment in favor of the department
12 or self-insurer, as the case may be, in the manner provided by law in
13 the case of judgment, wholly or partially unsatisfied. The clerk of
14 the court shall be entitled to a filing fee under RCW 36.18.012(10),
15 which shall be added to the amount of the warrant. A copy of such
16 warrant shall be mailed to the worker, beneficiary, or other person
17 within three days of filing with the clerk.

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

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

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

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

21 **Sec. 41.** RCW 51.32.250 and 1988 c 161 s 10 are each amended to
22 read as follows:

23 Modification of the injured worker's previous job or modification
24 of a new job is recognized as a desirable method of returning the
25 injured worker to gainful employment. In order to assist employers in
26 meeting the costs of job modification, and to encourage employers to
27 modify jobs to accommodate retaining or hiring workers with
28 disabilities resulting from work-related injury, the (~~supervisor or~~
29 ~~the supervisor's designee~~) department, in (~~his or her~~) its
30 discretion, may pay job modification costs in an amount not to exceed
31 five thousand dollars per worker per job modification. This payment is
32 intended to be a cooperative participation with the employer and funds
33 shall be taken from the appropriate account within the second injury
34 fund.

35 The benefits provided for in this section are available to any
36 otherwise eligible worker regardless of the date of industrial injury.

1 **Sec. 42.** RCW 51.36.010 and 1986 c 58 s 6 are each amended to read
2 as follows:

3 Upon the occurrence of any injury to a worker entitled to
4 compensation under the provisions of this title, he or she shall
5 receive proper and necessary medical and surgical services at the hands
6 of a physician of his or her own choice, if conveniently located, and
7 proper and necessary hospital care and services during the period of
8 his or her disability from such injury, but the same shall be limited
9 in point of duration as follows:

10 In the case of permanent partial disability, not to extend beyond
11 the date when compensation shall be awarded him or her, except when the
12 worker returned to work before permanent partial disability award is
13 made, in such case not to extend beyond the time when monthly
14 allowances to him or her shall cease; in case of temporary disability
15 not to extend beyond the time when monthly allowances to him or her
16 shall cease(~~(: PROVIDED, That)~~). However, after any injured worker
17 has returned to his or her work his or her medical and surgical
18 treatment may be continued if, and so long as, such continuation is
19 deemed necessary by the (~~supervisor of industrial insurance~~)
20 department or self-insurer, as the case may be, to be necessary to his
21 or her more complete recovery; in case of a permanent total disability
22 not to extend beyond the date on which a lump sum settlement is made
23 with him or her or he or she is placed upon the permanent pension
24 roll(~~(: PROVIDED, HOWEVER, That)~~). The (~~supervisor of industrial~~
25 ~~insurance~~) department or self-insurer, as the case may be, solely in
26 (~~his or her~~) its discretion, may authorize continued medical and
27 surgical treatment for conditions previously accepted (~~by the~~
28 ~~department~~) when such medical and surgical treatment is deemed
29 necessary by the (~~supervisor of industrial insurance~~) department or
30 self-insurer, as the case may be, to protect such worker's life or
31 provide for the administration of medical and therapeutic measures
32 including payment of prescription medications, but not including those
33 controlled substances currently scheduled by the state board of
34 pharmacy as Schedule I, II, III, or IV substances under chapter 69.50
35 RCW, which are necessary to alleviate continuing pain which results
36 from the industrial injury. In order to authorize such continued
37 treatment the written order of the (~~supervisor of industrial~~

1 insurance)) department or self-insurer, as the case may be, issued in
2 advance of the continuation shall be necessary.

3 The (~~supervisor of industrial insurance, the supervisor's~~
4 ~~designee,~~) department or a self-insurer, as the case may be, in (~~his~~
5 ~~or her~~) its sole discretion, may authorize inoculation or other
6 immunological treatment in cases in which a work-related activity has
7 resulted in probable exposure of the worker to a potential infectious
8 occupational disease. Authorization of such treatment does not bind
9 the department or self-insurer in any adjudication of a claim by the
10 same worker or the worker's beneficiary for an occupational disease.

11 **Sec. 43.** RCW 51.36.015 and 1994 c 94 s 1 are each amended to read
12 as follows:

13 Subject to the other provisions of this title, the health services
14 that are available to an injured worker under RCW 51.36.010 include
15 chiropractic care and evaluation. For the purposes of assisting the
16 department or self-insurer in making claims determinations, an injured
17 worker may be required by the department or self-insurer, as the case
18 may be, to undergo examination by a chiropractor licensed under chapter
19 18.25 RCW.

20 **Sec. 44.** RCW 51.36.020 and 1999 c 395 s 1 are each amended to read
21 as follows:

22 (1) When the injury to any worker is so serious as to require his
23 or her being taken from the place of injury to a place of treatment,
24 his or her employer shall, at the expense of the medical aid fund, or
25 self-insurer, as the case may be, furnish transportation to the nearest
26 place of proper treatment.

27 (2) Every worker whose injury results in the loss of one or more
28 limbs or eyes shall be provided with proper artificial substitutes and
29 every worker, who suffers an injury to an eye producing an error of
30 refraction, shall be once provided proper and properly equipped lenses
31 to correct such error of refraction and his or her disability rating
32 shall be based upon the loss of sight before correction.

33 (3) Every worker whose accident results in damage to or destruction
34 of an artificial limb, eye, or tooth, shall have same repaired or
35 replaced.

1 (4) Every worker whose hearing aid or eyeglasses or lenses are
2 damaged, destroyed, or lost as a result of an industrial accident shall
3 have the same restored or replaced. The department or self-insurer, as
4 the case may be, shall be liable only for the cost of restoring damaged
5 hearing aids or eyeglasses to their condition at the time of the
6 accident.

7 (5) All mechanical appliances necessary in the treatment of an
8 injured worker, such as braces, belts, casts, and crutches, shall be
9 provided and all mechanical appliances required as permanent equipment
10 after treatment has been completed shall continue to be provided or
11 replaced without regard to the date of injury or date treatment was
12 completed, notwithstanding any other provision of law.

13 (6) A worker, whose injury is of such short duration as to bring
14 him or her within the time limit provisions of RCW 51.32.090, shall
15 nevertheless receive during the omitted period medical, surgical, and
16 hospital care and service and transportation under the provisions of
17 this chapter.

18 (7) Whenever in the sole discretion of the (~~supervisor~~)
19 department or self-insurer, as the case may be, it is reasonable and
20 necessary to provide residence modifications necessary to meet the
21 needs and requirements of the worker who has sustained catastrophic
22 injury, the department or self-insurer may (~~be ordered to~~) pay an
23 amount not to exceed the state's average annual wage for one year as
24 determined under RCW 50.04.355(~~(, as now existing or hereafter~~
25 ~~amended,~~) toward the cost of such modifications or construction. Such
26 payment shall only be made for the construction or modification of a
27 residence in which the injured worker resides. Only one residence of
28 any worker may be modified or constructed under this subsection,
29 although (~~the supervisor may order~~) there may be more than one
30 payment for any one home, up to the maximum amount permitted by this
31 section.

32 (8)(a) Whenever in the sole discretion of the (~~supervisor~~)
33 department or self-insurer, as the case may be, it is reasonable and
34 necessary to modify a motor vehicle owned by a worker who has become an
35 amputee or becomes paralyzed because of an industrial injury, the
36 (~~supervisor may order~~) department or self-insurer may pay up to fifty
37 percent of the state's average annual wage for one year, as determined

1 under RCW 50.04.355, (~~to be paid by the department or self-insurer~~)
2 toward the costs thereof.

3 (b) In the sole discretion of the (~~supervisor~~) department or
4 self-insurer, as the case may be, after (~~his or her~~) its review, the
5 amount paid under this subsection may be increased by no more than four
6 thousand dollars by written order (~~of the supervisor~~).

7 (9) The benefits provided by subsections (7) and (8) of this
8 section are available to any otherwise eligible worker regardless of
9 the date of industrial injury.

10 **Sec. 45.** RCW 51.36.060 and 1991 c 89 s 3 are each amended to read
11 as follows:

12 Physicians examining or attending injured workers under this title
13 shall comply with rules and regulations adopted by the director, and
14 shall make such reports as may be requested by the department or self-
15 insurer upon the condition or treatment of any such worker, or upon any
16 other matters concerning such workers in their care. Except under RCW
17 49.17.210 and 49.17.250, all medical information in the possession or
18 control of any person and relevant to the particular injury in the
19 opinion of the department or self-insurer pertaining to any worker
20 whose injury or occupational disease is the basis of a claim under this
21 title shall be made available at any stage of the proceedings to the
22 employer, the claimant's representative, and the department upon
23 request, and no person shall incur any legal liability by reason of
24 releasing such information.

25 **Sec. 46.** RCW 51.36.070 and 2001 c 152 s 2 are each amended to read
26 as follows:

27 Whenever the (~~director~~) department or the self-insurer, as the
28 case may be, deems it necessary in order to resolve any medical issue,
29 a worker shall submit to examination by a physician or physicians
30 selected by the (~~director~~) department or self-insurer, with the
31 rendition of a report to the person ordering the examination. The
32 department or self-insurer shall provide the physician performing an
33 examination with all relevant medical records from the worker's claim
34 file. (~~The director, in his or her discretion, may charge~~) The cost
35 of such examination (~~or examinations to the self-insurer or to the~~
36 ~~medical aid fund as the case may be~~) shall be borne by the self-

1 insurer in a self-insured claim. The cost of said examination shall
2 include payment to the worker of reasonable expenses connected
3 therewith.

4 **Sec. 47.** RCW 51.48.017 and 1985 c 347 s 3 are each amended to read
5 as follows:

6 (1) If a self-insurer unreasonably delays or refuses to ((pay))
7 provide benefits to the worker as they become due ((there shall be paid
8 by the self-insurer upon order of the director)), but not after an
9 order closing the claim has become final by operation of law, the
10 department may order the self-insured employer to pay an additional
11 amount equal to five hundred dollars or twenty-five percent of the
12 amount then due, whichever is greater, which shall accrue for the
13 benefit of the claimant and shall be paid to him with the benefits
14 which may be assessed under this title. ~~((The director shall issue an~~
15 ~~order determining whether there was an unreasonable delay or refusal to~~
16 ~~pay benefits within thirty days upon the request of the claimant. Such~~
17 ~~an order))~~

18 (2) The department may summarily deny a request for penalties if on
19 its face it is deemed frivolous, in all other cases the department
20 shall require the self-insured employer to file a written, substantive
21 response. In such event, the self-insured employer shall have twenty
22 working days to provide relevant documents to the department and
23 respond to the request for penalties by the claimant. The department
24 shall issue an order determining whether there was an unreasonable
25 delay or refusal to pay benefits within sixty days after receipt of the
26 documents requested from the self-insurer. Failure of the department
27 to review the request and issue a timely order shall result in the
28 issuance of an order denying the request for penalties. Any order
29 under this section shall conform to the requirements of RCW 51.52.050.

30 **Sec. 48.** RCW 51.48.040 and 2003 c 53 s 282 are each amended to
31 read as follows:

32 (1) The books, records and payrolls of the employer pertinent to
33 the administration of this title shall always be open to inspection by
34 the department or its traveling auditor, agent or assistant, for the
35 purpose of ascertaining the correctness of the payroll, the persons

1 employed, and such other information as may be necessary for the
2 department and its management under this title.

3 (2) Refusal on the part of the employer to submit his or her books,
4 records and payrolls for such inspection to the department, or any
5 assistant presenting written authority from the director, shall subject
6 the offending employer to a penalty determined by the director but not
7 to exceed two hundred fifty dollars for each offense and the individual
8 who personally gives such refusal is guilty of a misdemeanor.

9 (3) Any employer who fails to allow adequate inspection in
10 accordance with the requirements of this section is subject to having
11 its certificate of coverage revoked by order of the department and is
12 forever barred from questioning in any proceeding in front of the board
13 of industrial insurance appeals or any court, the correctness of any
14 assessment by the department based on any period for which such records
15 have not been produced for inspection.

16 (4) Claims processing practices of self-insured employers are
17 subject to audit by the department. Supporting documentation and
18 records shall be maintained in accordance with RCW 51.14.110.

19 (5) Audits of self-insured employers by the department shall be
20 conducted as necessary to determine compliance with this title and
21 rules adopted by the department to carry out the purposes of this
22 title, but shall not disturb any prior final orders issued in good
23 faith by the self-insured employer that have become final by operation
24 of law.

25 **Sec. 49.** RCW 51.48.080 and 1985 c 347 s 7 are each amended to read
26 as follows:

27 (1) Every person, firm or corporation who violates or fails to
28 obey, observe or comply with any rule of the department ((promulgated))
29 adopted under authority of this title, shall be subject to a penalty of
30 not to exceed five hundred dollars.

31 (2) The department may impose penalties against a self-insured
32 employer when it determines by audit pursuant to RCW 51.48.040 that the
33 self-insured employer has:

34 (a) Failed to pay or provide benefits to a worker or on a worker's
35 behalf on a timely basis;

36 (b) Paid its injured workers monetary benefits in incorrect
37 amounts;

1 (c) Failed to issue allowance or rejection orders on a timely
2 basis;

3 (d) Failed to issue orders closing a claim within sixty days after
4 the attending physician has found an injured worker to be fixed and
5 stable and a permanent disability level has been established by a
6 preponderance of the medical evidence.

7 (3) Self-insured employer audits discovering claims processing and
8 clerical errors not involving violations set forth in subsection (2)(a)
9 through (d) of this section are not subject to assessment of penalties.

10 (4) The department shall adopt a schedule of penalties that will
11 take into account the severity and number of violations.

12 (5) Orders imposing penalties for violations described in this
13 section shall conform to the requirements of RCW 51.52.050.

14 **Sec. 50.** RCW 51.52.050 and 1987 c 151 s 1 are each amended to read
15 as follows:

16 (1) Except as provided in RCW 51.32.095, whenever the department or
17 self-insurer has made any order, decision, or award, it shall promptly
18 serve the worker, beneficiary, employer, or other person affected
19 thereby, with a copy thereof by mail, which shall be addressed to such
20 person at his or her last known address as shown by the records of the
21 department or self-insurer, as the case may be. The copy, in case the
22 same is a final order, decision, or award, shall bear on the same side
23 of the same page on which is found the amount of the award, a
24 statement, set in black faced type of at least ten point body or size,
25 that such final order, decision, or award shall become final within
26 sixty days from the date the order is communicated to the parties
27 unless a written request for reconsideration is filed with the
28 department of labor and industries, Olympia, and in cases involving a
29 self-insurer with the self-insurer, or an appeal is filed with the
30 board of industrial insurance appeals, Olympia(~~:- PROVIDED, That~~)).
31 However, a department order or decision making demand, whether with or
32 without penalty, for repayment of sums paid to a provider of medical,
33 dental, vocational, or other health services rendered to an
34 industrially injured worker, shall state that such order or decision
35 shall become final within twenty days from the date the order or
36 decision is communicated to the parties unless a written request for

1 reconsideration is filed with the department of labor and industries,
2 Olympia, or an appeal is filed with the board of industrial insurance
3 appeals, Olympia.

4 (2) Except as provided in RCW 51.32.095, whenever the department or
5 self-insurer has taken any action or made any decision relating to any
6 phase of the administration of this title the worker, beneficiary,
7 employer, or other person aggrieved thereby may request reconsideration
8 ((of the department)), or may appeal to the board. In an appeal before
9 the board, the appellant shall have the burden of proceeding with the
10 evidence to establish a prima facie case for the relief sought in such
11 appeal((:—PROVIDED, That)). However, in an appeal from an order of
12 ((the department)) that alleges fraud, the department or self-insured
13 employer shall initially introduce all evidence in its case in chief.
14 Any such person aggrieved by the decision and order of the board may
15 thereafter appeal to the superior court, as prescribed in this chapter.

16 (3) Except as provided in RCW 51.32.095, if the department is
17 requested to reconsider an order issued by a self-insurer, the
18 department must issue an order affirming, modifying, reversing, or
19 remanding the order within sixty days of receipt of the request.
20 However, for good cause, the department may once extend the time for
21 issuing an order for an additional thirty days. The self-insurer's
22 order shall be affirmed if it is supported by substantial evidence in
23 the claim file. If the department fails to issue an order within the
24 time frames specified in this section, the self-insurer's order is
25 deemed affirmed, subject to appeal. Upon receipt of a request for
26 reconsideration, the department shall notify all parties of the date
27 the department received the request and the date upon which the self-
28 insurer's order will be deemed affirmed if the department fails to take
29 action. The notice shall also inform the parties that any appeal
30 pursuant to RCW 51.52.060 must be filed within sixty days from the date
31 the order is deemed affirmed. If such appeal is filed, the department
32 may not direct submission of further evidence under RCW 51.52.060.

33 **Sec. 51.** RCW 51.52.060 and 1995 c 253 s 1 and 1995 c 199 s 7 are
34 each reenacted and amended to read as follows:

35 (1)(a) Except as otherwise specifically provided in this section,
36 a worker, beneficiary, employer, health services provider, or other
37 person aggrieved by an order, decision, or award of the department or

1 self-insurer must, before he or she appeals to the courts, file with
2 the board and the director, by mail or personally, and in cases
3 involving a self-insurer, with the self-insurer, within sixty days from
4 the day on which a copy of the order, decision, or award was
5 communicated to such person, a notice of appeal to the board. However,
6 a health services provider or other person aggrieved by a department
7 order or decision making demand, whether with or without penalty,
8 solely for repayment of sums paid to a provider of medical, dental,
9 vocational, or other health services rendered to an industrially
10 injured worker must, before he or she appeals to the courts, file with
11 the board and the director, by mail or personally, within twenty days
12 from the day on which a copy of the order or decision was communicated
13 to the health services provider upon whom the department order or
14 decision was served, a notice of appeal to the board.

15 (b) Failure to file a notice of appeal with ~~((both))~~ the board
16 ~~((and))~~, the department, and the self-insurer, if applicable, shall not
17 be grounds for denying the appeal if the notice of appeal is filed with
18 ~~((either))~~ the board ~~((or))~~, the department, or the self-insurer. If
19 the notice of appeal does not demonstrate, on its face, that it was
20 sent to the department, the board, and the self-insurer, if applicable,
21 the recipient shall forward a copy of the notice to the other parties
22 not served.

23 (2) Within ten days of the date on which an appeal has been granted
24 by the board, the board shall notify the other interested parties to
25 the appeal of the receipt of the appeal and shall forward a copy of the
26 notice of appeal to the other interested parties. Within twenty days
27 of the receipt of such notice of the board, the worker or the employer
28 may file with the board a cross-appeal from the order ~~((of the~~
29 ~~department))~~ from which the original appeal was taken.

30 (3) If within the time limited for filing a notice of appeal to the
31 board from an order, decision, or award ~~((of the department))~~, the
32 department directs the submission of further evidence or the
33 investigation of any further fact, the time for filing the notice of
34 appeal shall not commence to run until the person has been advised in
35 writing of the final decision of the department in the matter. In the
36 event the department directs the submission of further evidence or the
37 investigation of any further fact, as provided in this section, the
38 department shall render a final order, decision, or award within ninety

1 days from the date further submission of evidence or investigation of
2 further fact is ordered which time period may be extended by the
3 department for good cause stated in writing to all interested parties
4 for an additional ninety days.

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

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

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

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

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

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

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

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

32 (6) A provision of this section shall not be deemed to change,
33 alter, or modify the practice or procedure of the department for the
34 payment of awards pending appeal.

35 **Sec. 52.** RCW 51.52.070 and 1977 ex.s. c 350 s 77 are each amended
36 to read as follows:

37 The notice of appeal to the board shall set forth in full detail

1 the grounds upon which the person appealing considers such order,
2 decision, or award is unjust or unlawful, and shall include every issue
3 to be considered by the board, and it must contain a detailed statement
4 of facts upon which such worker, beneficiary, employer, or other person
5 relies in support thereof. The worker, beneficiary, employer, or other
6 person shall be deemed to have waived all objections or irregularities
7 concerning the matter on which such appeal is taken other than those
8 specifically set forth in such notice of appeal or appearing in the
9 records of the department or self-insurer. The department or self-
10 insurer shall promptly transmit its original record, or a legible copy
11 thereof produced by mechanical, photographic, or electronic means, in
12 such matter to the board.

13 **Sec. 53.** RCW 51.52.080 and 1971 ex.s. c 289 s 69 are each amended
14 to read as follows:

15 If the notice of appeal raises no issue or issues of fact and the
16 board finds that the department or self-insurer properly and lawfully
17 decided all matters raised by such appeal it may, without further
18 hearing, deny the same and confirm the ((department's)) decision or
19 award, or if the ((department's)) record sustains the contention of the
20 person appealing to the board, it may, without further hearing, allow
21 the relief asked in such appeal; otherwise, it shall grant the appeal.

22 NEW SECTION. **Sec. 54.** A new section is added to chapter 51.14 RCW
23 to read as follows:

24 For purposes of this title, "department or self-insurer, as the
25 case may be," means the department in claims insured by the state fund,
26 and the self-insurer in claims self-insured by the employer.

27 NEW SECTION. **Sec. 55.** RCW 51.32.190 (Self-insurers--Notice of
28 denial of claim, reasons--Procedure--Powers and duties of director) and
29 1996 c 58 s 2, 1982 1st ex.s. c 20 s 3, 1977 ex.s. c 350 s 54, 1972
30 ex.s. c 43 s 25, & 1971 ex.s. c 289 s 47 are each repealed.

31 NEW SECTION. **Sec. 56.** This act takes effect January 1, 2005.

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