

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 3188

Chapter 243, Laws of 2004

58th Legislature
2004 Regular Session

DEPARTMENT OF LABOR AND INDUSTRIES--OVERPAYMENTS

EFFECTIVE DATE: 6/10/04

Passed by the House March 10, 2004
Yeas 95 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 11, 2004
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved March 31, 2004.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 3188** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

March 31, 2004 - 2:39 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 3188

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature 2004 Regular Session

By House Committee on Commerce & Labor (originally sponsored by
Representatives Conway and Wood)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to liability to the department of labor and
2 industries for premiums, overpayments, and penalties; amending RCW
3 51.08.177, 51.12.070, 51.36.110, 51.32.240, and 51.52.050; adding new
4 sections to chapter 51.48 RCW; adding a new section to chapter 51.16
5 RCW; and creating new sections.

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

7 **Sec. 1.** RCW 51.08.177 and 1986 c 9 s 3 are each amended to read as
8 follows:

9 "Successor" means any person to whom a taxpayer quitting, selling
10 out, exchanging, or disposing of a business sells or otherwise conveys,
11 directly or indirectly, in bulk and not in the ordinary course of the
12 taxpayer's business, a major part of the ~~((materials, supplies,
13 merchandise, inventory, fixtures, or equipment))~~ property, whether real
14 or personal, tangible or intangible, of the taxpayer.

15 **Sec. 2.** RCW 51.12.070 and 1981 c 128 s 4 are each amended to read
16 as follows:

17 The provisions of this title ~~((shall))~~ apply to all work done by
18 contract; the person, firm, or corporation who lets a contract for such

1 work (~~shall be~~) is responsible primarily and directly for all
2 premiums upon the work. The contractor and any subcontractor (~~shall~~
3 ~~be~~) are subject to the provisions of this title and the person, firm,
4 or corporation letting the contract (~~shall be~~) is entitled to collect
5 from the contractor the full amount payable in premiums and the
6 contractor in turn (~~shall be~~) is entitled to collect from the
7 subcontractor his or her proportionate amount of the payment.

8 For the purposes of this section, a contractor registered under
9 chapter 18.27 RCW or licensed under chapter 19.28 RCW (~~shall not be~~)
10 is not responsible for any premiums upon the work of any subcontractor
11 if:

12 (1) The subcontractor is currently engaging in a business which is
13 registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW;

14 (2) The subcontractor has a principal place of business which would
15 be eligible for a business deduction for internal revenue service tax
16 purposes other than that furnished by the contractor for which the
17 business has contracted to furnish services;

18 (3) The subcontractor maintains a separate set of books or records
19 that reflect all items of income and expenses of the business; (~~and~~)

20 (4) The subcontractor has contracted to perform:

21 (a) The work of a contractor as defined in RCW 18.27.010; or

22 (b) The work of installing wires or equipment to convey electric
23 current or installing apparatus to be operated by such current as it
24 pertains to the electrical industry as described in chapter 19.28 RCW;
25 and

26 (5) The subcontractor has an industrial insurance account in good
27 standing with the department or is a self-insurer. For the purposes of
28 this subsection, a contractor may consider a subcontractor's account to
29 be in good standing if, within a year prior to letting the contract or
30 master service agreement, and at least once a year thereafter, the
31 contractor has verified with the department that the account is in good
32 standing and the contractor has not received written notice from the
33 department that the subcontractor's account status has changed.
34 Acceptable documentation of verification includes a department document
35 which includes an issued date or a dated printout of information from
36 the department's internet web site showing a subcontractor's good
37 standing. The department shall develop an approach to provide

1 contractors with verification of the date of inquiries validating that
2 the subcontractor's account is in good standing.

3 It (~~shall be~~) is unlawful for any county, city, or town to issue
4 a construction building permit to any person who has not submitted to
5 the department an estimate of payroll and paid premium thereon as
6 provided by chapter 51.16 RCW of this title or proof (~~that such person~~
7 ~~has qualified~~) of qualification as a self-insurer.

8 NEW SECTION. Sec. 3. A new section is added to chapter 51.48 RCW
9 to read as follows:

10 (1) Upon termination, dissolution, or abandonment of a corporate or
11 limited liability company business, any officer, member, manager, or
12 other person having control or supervision of payment and/or reporting
13 of industrial insurance, or who is charged with the responsibility for
14 the filing of returns, is personally liable for any unpaid premiums and
15 interest and penalties on those premiums if such officer or other
16 person willfully fails to pay or to cause to be paid any premiums due
17 the department under chapter 51.16 RCW.

18 For purposes of this subsection "willfully fails to pay or to cause
19 to be paid" means that the failure was the result of an intentional,
20 conscious, and voluntary course of action.

21 (2) The officer, member, manager, or other person is liable only
22 for premiums that became due during the period he or she had the
23 control, supervision, responsibility, or duty to act for the
24 corporation described in subsection (1) of this section, plus interest
25 and penalties on those premiums.

26 (3) The officer, member, manager, or other person is not liable if
27 that person is not exempt from mandatory coverage under RCW 51.12.020
28 and was directed not to pay the employer's premiums by someone who is
29 exempt.

30 (4) The officer, member, manager, or other person is not liable if
31 all of the assets of the corporation or limited liability company have
32 been applied to its debts through bankruptcy or receivership.

33 (5) Any person having been issued a notice of assessment under this
34 section is entitled to the appeal procedures under RCW 51.48.131.

35 (6) This section does not relieve the corporation or limited
36 liability company of its liabilities under Title 51 RCW or otherwise
37 impair other tax collection remedies afforded by law.

1 (7) Collection authority and procedures prescribed in this chapter
2 apply to collections under this section.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 51.16 RCW
4 to read as follows:

5 The department shall, working with business associations and other
6 employer and employee groups when practical, publish information and
7 provide training to promote understanding of the premium liability that
8 may be incurred under this chapter.

9 NEW SECTION. **Sec. 5.** A new section is added to chapter 51.48 RCW
10 to read as follows:

11 The department shall, working with business associations and other
12 employer and employee groups when practical, publish information and
13 provide training to promote understanding of the premium liability that
14 may be incurred under this chapter.

15 **Sec. 6.** RCW 51.36.110 and 1994 c 154 s 312 are each amended to
16 read as follows:

17 The director of the department of labor and industries or the
18 director's authorized representative shall have the authority to:

19 (1) Conduct audits and investigations of providers of medical,
20 chiropractic, dental, vocational, and other health services furnished
21 to industrially injured workers pursuant to Title 51 RCW. In the
22 conduct of such audits or investigations, the director or the
23 director's authorized representatives may examine all records, or
24 portions thereof, including patient records, for which services were
25 rendered by a health services provider and reimbursed by the
26 department, notwithstanding the provisions of any other statute which
27 may make or purport to make such records privileged or confidential:
28 PROVIDED, That no original patient records shall be removed from the
29 premises of the health services provider, and that the disclosure of
30 any records or information obtained under authority of this section by
31 the department of labor and industries is prohibited and constitutes a
32 violation of RCW 42.52.050, unless such disclosure is directly
33 connected to the official duties of the department: AND PROVIDED
34 FURTHER, That the disclosure of patient information as required under
35 this section shall not subject any physician or other health services

1 provider to any liability for breach of any confidential relationships
2 between the provider and the patient: AND PROVIDED FURTHER, That the
3 director or the director's authorized representative shall destroy all
4 copies of patient medical records in their possession upon completion
5 of the audit, investigation, or proceedings;

6 (2) Approve or deny applications to participate as a provider of
7 services furnished to industrially injured workers pursuant to Title 51
8 RCW; (~~and~~)

9 (3) Terminate or suspend eligibility to participate as a provider
10 of services furnished to industrially injured workers pursuant to Title
11 51 RCW; and

12 (4) Pursue collection of unpaid overpayments and/or penalties plus
13 interest accrued from health care providers pursuant to RCW
14 51.32.240(6).

15 **Sec. 7.** RCW 51.32.240 and 2001 c 146 s 10 are each amended to read
16 as follows:

17 (1)(a) Whenever any payment of benefits under this title is made
18 because of clerical error, mistake of identity, innocent
19 misrepresentation by or on behalf of the recipient thereof mistakenly
20 acted upon, or any other circumstance of a similar nature, all not
21 induced by (~~fraud~~) willful misrepresentation, the recipient thereof
22 shall repay it and recoupment may be made from any future payments due
23 to the recipient on any claim with the state fund or self-insurer, as
24 the case may be. The department or self-insurer, as the case may be,
25 must make claim for such repayment or recoupment within one year of the
26 making of any such payment or it will be deemed any claim therefor has
27 been waived.

28 (b) Except as provided in subsections (3), (4), and (5) of this
29 section, the department may only assess an overpayment of benefits
30 because of adjudicator error when the order upon which the overpayment
31 is based is not yet final as provided in RCW 51.52.050 and 51.52.060.
32 "Adjudicator error" includes the failure to consider information in the
33 claim file, failure to secure adequate information, or an error in
34 judgment.

35 (c) The director, pursuant to rules adopted in accordance with the
36 procedures provided in the administrative procedure act, chapter 34.05

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

4 (2) Whenever the department or self-insurer fails to pay benefits
5 because of clerical error, mistake of identity, or innocent
6 misrepresentation, all not induced by recipient (~~fraud~~) willful
7 misrepresentation, the recipient may request an adjustment of benefits
8 to be paid from the state fund or by the self-insurer, as the case may
9 be, subject to the following:

10 (a) The recipient must request an adjustment in benefits within one
11 year from the date of the incorrect payment or it will be deemed any
12 claim therefore has been waived.

13 (b) The recipient may not seek an adjustment of benefits because of
14 adjudicator error. Adjustments due to adjudicator error are addressed
15 by the filing of a written request for reconsideration with the
16 department of labor and industries or an appeal with the board of
17 industrial insurance appeals within sixty days from the date the order
18 is communicated as provided in RCW 51.52.050. "Adjudicator error"
19 includes the failure to consider information in the claim file, failure
20 to secure adequate information, or an error in judgment.

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

33 (4) Whenever any payment of benefits under this title has been made
34 pursuant to an adjudication by the department or by order of the board
35 or any court and timely appeal therefrom has been made where the final
36 decision is that any such payment was made pursuant to an erroneous
37 adjudication, the recipient thereof shall repay it and recoupment may
38 be made from any future payments due to the recipient on any claim with

1 the state fund or self-insurer, as the case may be. The director,
2 pursuant to rules adopted in accordance with the procedures provided in
3 the administrative procedure act, chapter 34.05 RCW, may exercise his
4 discretion to waive, in whole or in part, the amount of any such
5 payments where the recovery would be against equity and good
6 conscience.

7 (5)(a) Whenever any payment of benefits under this title has been
8 induced by (~~fraud~~) willful misrepresentation the recipient thereof
9 shall repay any such payment together with a penalty of fifty percent
10 of the total of any such payments and the amount of such total sum may
11 be recouped from any future payments due to the recipient on any claim
12 with the state fund or self-insurer against whom the (~~fraud~~) willful
13 misrepresentation was committed, as the case may be, and the amount of
14 such penalty shall be placed in the supplemental pension fund. Such
15 repayment or recoupment must be demanded or ordered within three years
16 of the discovery of the (~~fraud~~) willful misrepresentation.

17 (b) For purposes of this subsection (5), it is willful
18 misrepresentation for a person to obtain payments or other benefits
19 under this title in an amount greater than that to which the person
20 otherwise would be entitled. Willful misrepresentation includes:

21 (i) Willful false statement; or

22 (ii) Willful misrepresentation, omission, or concealment of any
23 material fact.

24 (c) For purposes of this subsection (5), "willful" means a
25 conscious or deliberate false statement, misrepresentation, omission,
26 or concealment of a material fact with the specific intent of
27 obtaining, continuing, or increasing benefits under this title.

28 (d) For purposes of this subsection (5), failure to disclose a
29 work-type activity must be willful in order for a misrepresentation to
30 have occurred.

31 (e) For purposes of this subsection (5), a material fact is one
32 which would result in additional, increased, or continued benefits,
33 including but not limited to facts about physical restrictions, or
34 work-type activities which either result in wages or income or would be
35 reasonably expected to do so. Wages or income include the receipt of
36 any goods or services. For a work-type activity to be reasonably
37 expected to result in wages or income, a pattern of repeated activity
38 must exist. For those activities that would reasonably be expected to

1 result in wages or produce income, but for which actual wage or income
2 information cannot be reasonably determined, the department shall
3 impute wages pursuant to RCW 51.08.178(4).

4 (6) The worker, beneficiary, or other person affected thereby shall
5 have the right to contest an order assessing an overpayment pursuant to
6 this section in the same manner and to the same extent as provided
7 under RCW 51.52.050 and 51.52.060. In the event such an order becomes
8 final under chapter 51.52 RCW and notwithstanding the provisions of
9 subsections (1) through (5) of this section, the director, director's
10 designee, or self-insurer may file with the clerk in any county within
11 the state a warrant in the amount of the sum representing the unpaid
12 overpayment and/or penalty plus interest accruing from the date the
13 order became final. The clerk of the county in which the warrant is
14 filed shall immediately designate a superior court cause number for
15 such warrant and the clerk shall cause to be entered in the judgment
16 docket under the superior court cause number assigned to the warrant,
17 the name of the worker, beneficiary, or other person mentioned in the
18 warrant, the amount of the unpaid overpayment and/or penalty plus
19 interest accrued, and the date the warrant was filed. The amount of
20 the warrant as docketed shall become a lien upon the title to and
21 interest in all real and personal property of the worker, beneficiary,
22 or other person against whom the warrant is issued, the same as a
23 judgment in a civil case docketed in the office of such clerk. The
24 sheriff shall then proceed in the same manner and with like effect as
25 prescribed by law with respect to execution or other process issued
26 against rights or property upon judgment in the superior court. Such
27 warrant so docketed shall be sufficient to support the issuance of
28 writs of garnishment in favor of the department or self-insurer in the
29 manner provided by law in the case of judgment, wholly or partially
30 unsatisfied. The clerk of the court shall be entitled to a filing fee
31 under RCW 36.18.012(10), which shall be added to the amount of the
32 warrant. A copy of such warrant shall be mailed to the worker,
33 beneficiary, or other person within three days of filing with the
34 clerk.

35 The director, director's designee, or self-insurer may issue to any
36 person, firm, corporation, municipal corporation, political subdivision
37 of the state, public corporation, or agency of the state, a notice to
38 withhold and deliver property of any kind if there is reason to believe

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

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

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

1 **Sec. 8.** RCW 51.52.050 and 1987 c 151 s 1 are each amended to read
2 as follows:

3 Whenever the department has made any order, decision, or award, it
4 shall promptly serve the worker, beneficiary, employer, or other person
5 affected thereby, with a copy thereof by mail, which shall be addressed
6 to such person at his or her last known address as shown by the records
7 of the department. The copy, in case the same is a final order,
8 decision, or award, shall bear on the same side of the same page on
9 which is found the amount of the award, a statement, set in black faced
10 type of at least ten point body or size, that such final order,
11 decision, or award shall become final within sixty days from the date
12 the order is communicated to the parties unless a written request for
13 reconsideration is filed with the department of labor and industries,
14 Olympia, or an appeal is filed with the board of industrial insurance
15 appeals, Olympia: PROVIDED, That a department order or decision making
16 demand, whether with or without penalty, for repayment of sums paid to
17 a provider of medical, dental, vocational, or other health services
18 rendered to an industrially injured worker, shall state that such order
19 or decision shall become final within twenty days from the date the
20 order or decision is communicated to the parties unless a written
21 request for reconsideration is filed with the department of labor and
22 industries, Olympia, or an appeal is filed with the board of industrial
23 insurance appeals, Olympia.

24 Whenever the department has taken any action or made any decision
25 relating to any phase of the administration of this title the worker,
26 beneficiary, employer, or other person aggrieved thereby may request
27 reconsideration of the department, or may appeal to the board. In an
28 appeal before the board, the appellant shall have the burden of
29 proceeding with the evidence to establish a prima facie case for the
30 relief sought in such appeal: PROVIDED, That in an appeal from an
31 order of the department that alleges (~~fraud~~) willful
32 misrepresentation, the department or self-insured employer shall
33 initially introduce all evidence in its case in chief. Any such person
34 aggrieved by the decision and order of the board may thereafter appeal
35 to the superior court, as prescribed in this chapter.

36 NEW SECTION. **Sec. 9.** Section 7 of this act applies to willful
37 misrepresentation determinations issued on or after July 1, 2004.

1 NEW SECTION. **Sec. 10.** The department shall adopt rules to
2 implement this act.

 Passed by the House March 10, 2004.

 Passed by the Senate March 11, 2004.

 Approved by the Governor March 31, 2004.

 Filed in Office of Secretary of State March 31, 2004.