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**SUBSTITUTE SENATE BILL 5789**

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**State of Washington                      59th Legislature                      2005 Regular Session**

**By** Senate Committee on Labor, Commerce, Research & Development  
(originally sponsored by Senators Prentice and Parlette)

READ FIRST TIME 03/02/05.

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, 51.04.030, 51.04.040, 51.04.085,  
4 51.08.040, 51.08.173, 51.14.110, 51.14.120, 51.14.130, 51.16.120,  
5 51.24.030, 51.24.050, 51.24.060, 51.24.070, 51.24.080, 51.24.090,  
6 51.28.010, 51.28.010, 51.28.020, 51.28.020, 51.28.030, 51.28.030,  
7 51.28.040, 51.28.055, 51.28.055, 51.28.060, 51.28.070, 51.32.010,  
8 51.32.040, 51.32.055, 51.32.055, 51.32.060, 51.32.080, 51.32.095,  
9 51.32.095, 51.32.110, 51.32.160, 51.32.195, 51.32.210, 51.32.240,  
10 51.36.010, 51.36.010, 51.36.015, 51.36.020, 51.36.060, 51.36.060,  
11 51.36.070, 51.48.017, 51.48.040, 51.48.040, 51.48.080, 51.52.050,  
12 51.52.070, 51.52.080, 51.14.080, 51.14.140, 51.28.070, 51.48.017,  
13 51.48.025, and 51.48.080; reenacting and amending RCW 51.52.060; adding  
14 a new section to chapter 51.14 RCW; adding new sections to chapter  
15 51.48 RCW; creating a new section; repealing RCW 51.32.190; prescribing  
16 penalties; providing effective dates; and providing expiration dates.

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

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

1        (1) The director shall:

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

3 of this title and the auditing of self-insured employers under RCW

4 51.48.040 (4) and (5);

5        ~~((2))~~ (b) Ascertain and establish the amounts to be paid into and

6 out of the accident fund;

7        ~~((3))~~ (c) Regulate the proof of accident and extent thereof, the

8 proof of death and the proof of relationship and the extent of

9 dependency;

10        ~~((4))~~ (d) Supervise the medical, surgical, and hospital treatment

11 to the intent that it may be in all cases efficient and up to the

12 recognized standard of modern surgery;

13        ~~((5))~~ (e) Issue proper receipts for moneys received and

14 certificates for benefits accrued or accruing;

15        ~~((6))~~ (f) Investigate the cause of all serious injuries and

16 report to the governor from time to time any violations or laxity in

17 performance of protective statutes or regulations coming under the

18 observation of the department;

19        ~~((7))~~ (g) Compile statistics which will afford reliable

20 information upon which to base operations of all divisions under the

21 department;

22        ~~((8))~~ (h) Make an annual report to the governor of the workings

23 of the department;

24        ~~((9))~~ (i) Be empowered to enter into agreements with the

25 appropriate agencies of other states relating to conflicts of

26 jurisdiction where the contract of employment is in one state and

27 injuries are received in the other state, and insofar as permitted by

28 the Constitution and laws of the United States, to enter into similar

29 agreements with the provinces of Canada; and

30        ~~((10))~~ (j) Designate a medical director who is licensed under

31 chapter 18.57 or 18.71 RCW.

32        (2) Self-insured employers shall be vested with the powers and

33 duties necessary to adjudicate all aspects of industrial injury or

34 occupational disease claims of their injured workers without prior

35 approval or consent of the department subject to the provisions of this

36 title. Orders issued by self-insured employers shall conform with the

37 requirements contained in RCW 51.52.050. A self-insurer's order

38 determining that a worker shall be placed on the pension rolls as a

1 permanent totally disabled worker shall not make any factual findings  
2 beyond eligibility for the pension rolls and the effective date of such  
3 eligibility.

4 (3) If a worker or beneficiary requests reconsideration or appeals  
5 a self-insurer order, the department may review the order under RCW  
6 51.52.050, or may direct submission of further evidence under RCW  
7 51.52.050 and 51.52.060. A subsequent order issued by the department  
8 may be appealed by any aggrieved party.

9 **Sec. 2.** RCW 51.04.030 and 2004 c 65 s 1 are each amended to read  
10 as follows:

11 (1) The director shall supervise the providing of prompt and  
12 efficient care and treatment, including care provided by physician  
13 assistants governed by the provisions of chapters 18.57A and 18.71A  
14 RCW, acting under a supervising physician, including chiropractic care,  
15 and including care provided by licensed advanced registered nurse  
16 practitioners, to workers injured during the course of their employment  
17 at the least cost consistent with promptness and efficiency, without  
18 discrimination or favoritism, and with as great uniformity as the  
19 various and diverse surrounding circumstances and locations of  
20 industries will permit and to that end shall, from time to time,  
21 establish and adopt and supervise the administration of printed forms,  
22 rules, (~~((regulations,))~~) and practices for the furnishing of such care  
23 and treatment(~~((:—PROVIDED, That))~~). However, the medical coverage  
24 decisions of the department do not constitute a "rule" as used in RCW  
25 34.05.010(16), nor are such decisions subject to the rule-making  
26 provisions of chapter 34.05 RCW except that criteria for establishing  
27 medical coverage decisions shall be adopted by rule after consultation  
28 with the workers' compensation advisory committee established in RCW  
29 51.04.110(~~((:—PROVIDED FURTHER, That))~~). The department or self-  
30 insurer, as the case may be, may recommend to an injured worker  
31 particular health care services and providers where specialized  
32 treatment is indicated or where cost-effective payment levels or rates  
33 are obtained by the department(~~((:—AND PROVIDED FURTHER, That))~~) or  
34 self-insurer. The department may enter into contracts for goods and  
35 services including, but not limited to, durable medical equipment so  
36 long as statewide access to quality service is maintained for injured  
37 workers.

1           (2) The director shall, in consultation with interested persons,  
2 establish and, in his or her discretion, periodically change as may be  
3 necessary, and make available a fee schedule of the maximum charges to  
4 be made by any physician, surgeon, chiropractor, hospital, druggist,  
5 licensed advanced registered nurse practitioner, physicians' assistants  
6 as defined in chapters 18.57A and 18.71A RCW, acting under a  
7 supervising physician or other agency or person rendering services to  
8 injured workers. The department shall coordinate with other state  
9 purchasers of health care services to establish as much consistency and  
10 uniformity in billing and coding practices as possible, taking into  
11 account the unique requirements and differences between programs. No  
12 service covered under this title, including services provided to  
13 injured workers, whether aliens or other injured workers, who are not  
14 residing in the United States at the time of receiving the services,  
15 shall be charged or paid at a rate or rates exceeding those specified  
16 in such fee schedule, and no contract providing for greater fees shall  
17 be valid as to the excess. The establishment of such a schedule,  
18 exclusive of conversion factors, does not constitute "agency action" as  
19 used in RCW 34.05.010(3), nor does such a fee schedule constitute a  
20 "rule" as used in RCW 34.05.010(16).

21           (3) The director or self-insurer, as the case may be, shall make a  
22 record of the commencement of every disability and the termination  
23 thereof and, when bills are rendered for the care and treatment of  
24 injured workers, shall approve and pay those which conform to the  
25 adopted rules, (~~regulations~~) established fee schedules, and  
26 practices of the director and may reject any bill or item thereof  
27 incurred in violation of the principles laid down in this section or  
28 the rules, (~~regulations~~) or the established fee schedules and rules  
29 (~~and regulations~~) adopted under it.

30           **Sec. 3.** RCW 51.04.030 and 1998 c 230 s 1 are each amended to read  
31 as follows:

32           (1) The director shall supervise the providing of prompt and  
33 efficient care and treatment, including care provided by physician  
34 assistants governed by the provisions of chapters 18.57A and 18.71A  
35 RCW, acting under a supervising physician, and including chiropractic  
36 care, to workers injured during the course of their employment at the  
37 least cost consistent with promptness and efficiency, without

1 discrimination or favoritism, and with as great uniformity as the  
2 various and diverse surrounding circumstances and locations of  
3 industries will permit and to that end shall, from time to time,  
4 establish and adopt and supervise the administration of printed forms,  
5 rules, (~~regulations,~~) and practices for the furnishing of such care  
6 and treatment(~~(:—PROVIDED, That)~~). However, the medical coverage  
7 decisions of the department do not constitute a "rule" as used in RCW  
8 34.05.010(16), nor are such decisions subject to the rule-making  
9 provisions of chapter 34.05 RCW except that criteria for establishing  
10 medical coverage decisions shall be adopted by rule after consultation  
11 with the workers' compensation advisory committee established in RCW  
12 51.04.110(~~(:—PROVIDED FURTHER, That)~~). The department or self-  
13 insurer, as the case may be, may recommend to an injured worker  
14 particular health care services and providers where specialized  
15 treatment is indicated or where cost-effective payment levels or rates  
16 are obtained by the department(~~(:—AND PROVIDED FURTHER, That)~~) or  
17 self-insurer. The department may enter into contracts for goods and  
18 services including, but not limited to, durable medical equipment so  
19 long as statewide access to quality service is maintained for injured  
20 workers.

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

1 not constitute "agency action" as used in RCW 34.05.010(3), nor does  
2 such a fee schedule constitute a "rule" as used in RCW 34.05.010(16).

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

12 **Sec. 4.** RCW 51.04.040 and 1987 c 316 s 1 are each amended to read  
13 as follows:

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

25 **Sec. 5.** RCW 51.04.085 and 1977 ex.s. c 323 s 26 are each amended  
26 to read as follows:

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

32 **Sec. 6.** RCW 51.08.040 and 1961 c 23 s 51.08.040 are each amended  
33 to read as follows:

34 For purposes of this title, "department" means the department of

1 labor and industries, its director, and its director's appointees and  
2 employees.

3 **Sec. 7.** RCW 51.08.173 and 1983 c 174 s 1 are each amended to read  
4 as follows:

5 "Self-insurer" or "self-insured employer" means an employer or  
6 group of employers which has been authorized under this title to carry  
7 its own liability to its employees covered by this title.

8 **Sec. 8.** RCW 51.14.110 and 1971 ex.s. c 289 s 35 are each amended  
9 to read as follows:

10 Every self-insurer shall maintain a record of all payments of  
11 compensation made under this title. In the event of an audit by the  
12 department, the self-insurer shall furnish to the ((director))  
13 department all information ((he)) it has in ((his)) its possession ((as  
14 to any disputed claim)), upon forms approved by the ((director))  
15 department, within twenty days of receipt of a written request from the  
16 department. Every self-insurer shall monthly report to the department,  
17 in a format approved by the department, all claims filed or closed  
18 during the previous month, and any such information necessary to  
19 conduct the audits of self-insured employers.

20 **Sec. 9.** RCW 51.14.120 and 2001 c 152 s 1 are each amended to read  
21 as follows:

22 (1) The self-insurer shall provide, when authorized under RCW  
23 51.28.070, a copy of the employee's claim file at no cost within  
24 fifteen days of receipt of a request by the employee or the employee's  
25 representative, and shall provide the physician performing an  
26 examination with all relevant medical records from the worker's claim  
27 file, but only to the extent required of the department under RCW  
28 51.36.070. If the self-insured employer determines that release of the  
29 claim file to an unrepresented worker in whole or in part((τ)) may not  
30 be in the worker's best interests, the employer must ((submit a request  
31 for denial with)) issue an order that includes an explanation ((along  
32 with a copy of that portion of the claim file not previously provided  
33 within twenty days after the request from)) to the worker. In the case  
34 of second or subsequent requests, a reasonable charge for copying may  
35 be made. The self-insurer shall provide the entire contents of the

1 claim file unless the request is for only a particular portion of the  
2 file. Any new material added to the claim file after the initial  
3 request shall be provided under the same terms and conditions as the  
4 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. 10.** 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. If the self-  
21 insurer fails to allow or deny a claim within the specified time  
22 period, the claim shall be deemed allowed.

23 **Sec. 11.** RCW 51.16.120 and 2004 c 258 s 1 are each amended to read  
24 as follows:

25 (1) Whenever a worker has a previous bodily disability from any  
26 previous injury or disease, whether known or unknown to the employer,  
27 and shall suffer a further disability from injury or occupational  
28 disease in employment covered by this title and become totally and  
29 permanently disabled from the combined effects thereof or die when  
30 death was substantially accelerated by the combined effects thereof,  
31 then the experience record of an employer insured with the state fund  
32 at the time of said further injury or disease shall be charged and a  
33 self-insured employer shall pay directly into the reserve fund only the  
34 accident cost which would have resulted solely from said further injury  
35 or disease, had there been no preexisting disability, and which  
36 accident cost shall be based upon an evaluation of the disability by



1 medical experts. The difference between the charge thus assessed to  
2 such employer at the time of said further injury or disease and the  
3 total cost of the pension reserve shall be assessed against the second  
4 injury fund. The department shall pass upon the application of this  
5 section in all state fund cases where benefits are paid for total  
6 permanent disability or death and issue an order thereon appealable by  
7 the employer. Pending outcome of such appeal the transfer or payment  
8 shall be made as required by such order. In cases involving self-  
9 insurers, the department shall issue an order appealable by the  
10 employer passing on the application of this section. If total  
11 disability benefits have been paid by the self-insurer for dates after  
12 the first date of permanent total disability, the department shall  
13 reimburse the self-insurer from the second injury fund or the  
14 supplemental pension fund as indicated.

15 (2) The department shall, in cases of claims of workers sustaining  
16 injuries or occupational diseases in the employ of state fund  
17 employers, recompute the experience record of such employers when the  
18 claims of workers injured in their employ have been found to qualify  
19 for payments from the second injury fund after the regular time for  
20 computation of such experience records and the department may make  
21 appropriate adjustments in such cases including cash refunds or credits  
22 to such employers.

23 (3) To encourage employment of injured workers who are not  
24 reemployed by the employer at the time of injury, the department may  
25 adopt rules providing for the reduction or elimination of premiums or  
26 assessments from subsequent employers of such workers and may also  
27 adopt rules for the reduction or elimination of charges against such  
28 employers in the event of further injury to such workers in their  
29 employ.

30 (4) To encourage employment of injured workers who have a  
31 developmental disability as defined in RCW 71A.10.020, the department  
32 may adopt rules providing for the reduction or elimination of premiums  
33 or assessments from employers of such workers and may also adopt rules  
34 for the reduction or elimination of charges against their employers in  
35 the event of further injury to such workers in their employ.

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

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

5 (2) In every action brought under this section, the plaintiff shall  
6 give notice to the department or self-insurer, as the case may be, when  
7 the action is filed. The department or self-insurer may file a notice  
8 of statutory interest in recovery. When such notice has been filed by  
9 the department or self-insurer, the parties shall thereafter serve  
10 copies of all notices, motions, pleadings, and other process on the  
11 department or self-insurer. The department or self-insurer may then  
12 intervene as a party in the action to protect its statutory interest in  
13 recovery.

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

18 (4) Damages recoverable by a worker or beneficiary pursuant to the  
19 underinsured motorist coverage of an insurance policy shall be subject  
20 to this chapter only if the owner of the policy is the employer of the  
21 injured worker.

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

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

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

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

36 (3) If a beneficiary is a minor child, an election not to proceed

1 against a third person on such beneficiary's cause of action may be  
2 exercised by the beneficiary's legal custodian or guardian.

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

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

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

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

16 (d) The injured worker or beneficiary shall be paid any remaining  
17 balance.

18 (5) Thereafter no payment shall be made to or on behalf of a worker  
19 or beneficiary by the department (~~and/or~~) or self-insurer, as the  
20 case may be, for such injury until the amount of any further  
21 compensation and benefits shall equal any such remaining balance.  
22 Thereafter, such benefits shall be paid by the department (~~and/or~~) or  
23 self-insurer, as the case may be, to or on behalf of the worker or  
24 beneficiary as though no recovery had been made from a third person.

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

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

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

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

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

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

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

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

11 (a) The costs and reasonable attorneys' fees shall be paid  
12 proportionately by the injured worker or beneficiary and the department  
13 and/or self-insurer(~~(: PROVIDED, That))~~, as the case may be. However,  
14 the department and/or self-insurer may require court approval of costs  
15 and attorneys' fees or may petition a court for determination of the  
16 reasonableness of costs and attorneys' fees;

17 (b) The injured worker or beneficiary shall be paid twenty-five  
18 percent of the balance of the award(~~(: PROVIDED, That))~~. However, in  
19 the event of a compromise and settlement by the parties, the injured  
20 worker or beneficiary may agree to a sum less than twenty-five percent;

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

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

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

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

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

3 (e) Thereafter no payment shall be made to or on behalf of a worker  
4 or beneficiary by the department and/or self-insurer for such injury  
5 until the amount of any further compensation and benefits shall equal  
6 any such remaining balance minus the department's and/or self-insurer's  
7 proportionate share of the costs and reasonable attorneys' fees in  
8 regards to the remaining balance. This proportionate share shall be  
9 determined by dividing the gross recovery amount into the remaining  
10 balance amount and multiplying this percentage times the costs and  
11 reasonable attorneys' fees incurred by the worker or beneficiary.  
12 Thereafter, such benefits shall be paid by the department and/or self-  
13 insurer to or on behalf of the worker or beneficiary as though no  
14 recovery had been made from a third person.

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

17 (3) The department or self-insurer, as the case may be, has sole  
18 discretion to compromise the amount of its lien. In deciding whether  
19 or to what extent to compromise its lien, the department or self-  
20 insurer shall consider at least the following:

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

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

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

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

32 (5) It shall be the duty of the person to whom any recovery is paid  
33 before distribution under this section to advise the department or  
34 self-insurer, as the case may be, of the fact and amount of such  
35 recovery, the costs and reasonable attorneys' fees associated with the  
36 recovery, and to distribute the recovery in compliance with this  
37 section.

1           (6) The distribution of any recovery made by award or settlement of  
2 the third party action shall be confirmed by ~~((department))~~ order of  
3 the department or self-insurer, as the case may be, served by  
4 registered or certified mail, and shall be subject to chapter 51.52  
5 RCW. In the event the order of distribution becomes final under  
6 chapter 51.52 RCW, the ~~((director or the director's designee))~~  
7 department or self-insurer, as the case may be, may file with the clerk  
8 of any county within the state a warrant in the amount of the sum  
9 representing the unpaid lien plus interest accruing from the date the  
10 order became final. The clerk of the county in which the warrant is  
11 filed shall immediately designate a superior court cause number for  
12 such warrant and the clerk shall cause to be entered in the judgment  
13 docket under the superior court cause number assigned to the warrant,  
14 the name of such worker or beneficiary mentioned in the warrant, the  
15 amount of the unpaid lien plus interest accrued and the date when the  
16 warrant was filed. The amount of such warrant as docketed shall become  
17 a lien upon the title to and interest in all real and personal property  
18 of the injured worker or beneficiary against whom the warrant is  
19 issued, the same as a judgment in a civil case docketed in the office  
20 of such clerk. The sheriff shall then proceed in the same manner and  
21 with like effect as prescribed by law with respect to execution or  
22 other process issued against rights or property upon judgment in the  
23 superior court. Such warrant so docketed shall be sufficient to  
24 support the issuance of writs of garnishment in favor of the department  
25 or self-insurer, as the case may be, in the manner provided by law in  
26 the case of judgment, wholly or partially unsatisfied. The clerk of  
27 the court shall be entitled to a filing fee under RCW 36.18.012(10),  
28 which shall be added to the amount of the warrant. A copy of such  
29 warrant shall be mailed to the injured worker or beneficiary within  
30 three days of filing with the clerk.

31           (7) The ~~((director, or the director's designee,))~~ department or  
32 self-insurer, as the case may be, may issue to any person, firm,  
33 corporation, municipal corporation, political subdivision of the state,  
34 public corporation, or agency of the state, a notice and order to  
35 withhold and deliver property of any kind if he or she has reason to  
36 believe that there is in the possession of such person, firm,  
37 corporation, municipal corporation, political subdivision of the state,  
38 public corporation, or agency of the state, property which is due,

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

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

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

33 (2) Unless an election is made within sixty days of the receipt of  
34 the demand, and unless an action is instituted or settled within the  
35 time granted by the department or self-insurer, the injured worker or  
36 beneficiary is deemed to have assigned the action to the department or  
37 self-insurer, as the case may be. The department or self-insurer shall

1 allow the worker or beneficiary at least ninety days from the election  
2 to institute or settle the action. When a beneficiary is a minor child  
3 the demand shall be served upon the legal custodian or guardian of such  
4 beneficiary.

5 (3) If an action which has been filed is not diligently prosecuted,  
6 the department or self-insurer, as the case may be, may petition the  
7 court in which the action is pending for an order assigning the cause  
8 of action to the department or self-insurer. Upon a sufficient showing  
9 of a lack of diligent prosecution the court in its discretion may issue  
10 the order.

11 (4) If the department or self-insurer has taken an assignment of  
12 the third party cause of action under subsection (2) of this section,  
13 the injured worker or beneficiary may, at the discretion of the  
14 department or self-insurer, exercise a right of reelection and assume  
15 the cause of action subject to reimbursement of litigation expenses  
16 incurred by the department or self-insurer.

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

19 (1) If the injured worker or beneficiary elects to seek damages  
20 from the third person, notice of the election must be given to the  
21 department or self-insurer, as the case may be. The notice shall be by  
22 registered mail, certified mail, or personal service. If an action is  
23 filed by the injured worker or beneficiary, a copy of the complaint  
24 must be sent by registered mail to the department or self-insurer, as  
25 the case may be.

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

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

32 (1) Any compromise or settlement of the third party cause of action  
33 by the injured worker or beneficiary which results in less than the  
34 entitlement under this title is void unless made with the written  
35 approval of the department or self-insurer(~~(: PROVIDED, That))~~, as the



1 case may be. However, for the purposes of this chapter, "entitlement"  
2 means benefits and compensation paid and estimated by the department or  
3 self-insurer, as the case may be, to be paid in the future.

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

10 **Sec. 18.** RCW 51.28.010 and 2004 c 65 s 3 are each amended to read  
11 as follows:

12 (1) Whenever any accident occurs to any worker it shall be the duty  
13 of such worker or someone in his or her behalf to forthwith report such  
14 accident to his or her employer, superintendent, or supervisor in  
15 charge of the work, and of the employer to at once report such accident  
16 and the injury resulting therefrom to the department pursuant to RCW  
17 51.28.025 where the worker has received treatment from a physician or  
18 a licensed advanced registered nurse practitioner, has been  
19 hospitalized, disabled from work, or has died as the apparent result of  
20 such accident and injury.

21 (2) Upon receipt of such notice of accident, the department or  
22 self-insurer, as the case may be, shall immediately forward to the  
23 worker or his or her beneficiaries or dependents notification, in  
24 nontechnical language, of their rights under this title. The notice  
25 must specify the worker's right to receive health services from a  
26 physician or a licensed advanced registered nurse practitioner of the  
27 worker's choice under RCW 51.36.010, including chiropractic services  
28 under RCW 51.36.015, and must list the types of providers authorized to  
29 provide these services.

30 **Sec. 19.** RCW 51.28.010 and 2001 c 231 s 1 are each amended to read  
31 as follows:

32 (1) Whenever any accident occurs to any worker it shall be the duty  
33 of such worker or someone in his or her behalf to forthwith report such  
34 accident to his or her employer, superintendent, or supervisor in  
35 charge of the work, and of the employer to at once report such accident  
36 and the injury resulting therefrom to the department pursuant to RCW

1 51.28.025 where the worker has received treatment from a physician, has  
2 been hospitalized, disabled from work, or has died as the apparent  
3 result of such accident and injury.

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

12 **Sec. 20.** RCW 51.28.020 and 2004 c 65 s 4 are each amended to read  
13 as follows:

14 (1)((+a)) Where a worker is entitled to compensation under this  
15 title he or she shall file with the department or his or her self-  
16 insured employer, as the case may be, his or her application for such,  
17 together with the certificate of the physician or licensed advanced  
18 registered nurse practitioner who attended him or her. An application  
19 form developed by the department shall include a notice specifying the  
20 worker's right to receive health services from a physician or licensed  
21 advanced registered nurse practitioner of the worker's choice under RCW  
22 51.36.010, including chiropractic services under RCW 51.36.015, and  
23 listing the types of providers authorized to provide these services.

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

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

1           **Sec. 21.** RCW 51.28.020 and 2001 c 231 s 2 are each amended to read  
2 as follows:

3           (1)((~~a~~)) Where a worker is entitled to compensation under this  
4 title he or she shall file with the department or his or her self-  
5 insured employer, as the case may be, his or her application for such,  
6 together with the certificate of the physician who attended him or her.  
7 An application form developed by the department shall include a notice  
8 specifying the worker's right to receive health services from a  
9 physician of the worker's choice under RCW 51.36.010, including  
10 chiropractic services under RCW 51.36.015, and listing the types of  
11 providers authorized to provide these services.

12           ((~~b~~)) (2) The physician who attended the injured worker shall  
13 inform the injured worker of his or her rights under this title and  
14 lend all necessary assistance in making this application for  
15 compensation and such proof of other matters as required by the rules  
16 of the department without charge to the worker. The department shall  
17 provide physicians with a manual which outlines the procedures to be  
18 followed in applications for compensation involving occupational  
19 diseases, and which describes claimants' rights and responsibilities  
20 related to occupational disease claims.

21           ((~~2~~) ~~If application for compensation is made to a self-insured~~  
22 ~~employer, he or she shall forthwith send a copy of the application to~~  
23 ~~the department.~~))

24           **Sec. 22.** RCW 51.28.030 and 2004 c 65 s 6 are each amended to read  
25 as follows:

26           Where death results from injury the parties entitled to  
27 compensation under this title, or someone in their behalf, shall make  
28 application for the same to the department or self-insurer, as the case  
29 may be, which application must be accompanied with proof of death and  
30 proof of relationship showing the parties to be entitled to  
31 compensation under this title, certificates of attending physician or  
32 licensed advanced registered nurse practitioner, if any, and such proof  
33 as required by the rules of the department.

34           Upon receipt of notice of accident under RCW 51.28.010, the  
35 director or self-insurer, as the case may be, shall immediately forward  
36 to the party or parties required to make application for compensation

1 under this section, notification, in nontechnical language, of their  
2 rights under this title.

3 **Sec. 23.** RCW 51.28.030 and 1972 ex.s. c 43 s 17 are each amended  
4 to read as follows:

5 Where death results from injury the parties entitled to  
6 compensation under this title, or someone in their behalf, shall make  
7 application for the same to the department or self-insurer, as the case  
8 may be, which application must be accompanied with proof of death and  
9 proof of relationship showing the parties to be entitled to  
10 compensation under this title, certificates of attending physician, if  
11 any, and such proof as required by the rules of the department.

12 Upon receipt of notice of accident under RCW 51.28.010, the  
13 director or self-insurer, as the case may be, shall immediately forward  
14 to the party or parties required to make application for compensation  
15 under this section, notification, in nontechnical language, of their  
16 rights under this title.

17 **Sec. 24.** RCW 51.28.040 and 1977 ex.s. c 199 s 1 are each amended  
18 to read as follows:

19 If change of circumstances warrants an increase or rearrangement of  
20 compensation, like application shall be made therefor to the department  
21 or self-insurer, as the case may be. Where the application has been  
22 granted, compensation and other benefits if in order shall be allowed  
23 for periods of time up to sixty days prior to the receipt of such  
24 application.

25 **Sec. 25.** RCW 51.28.055 and 2004 c 65 s 7 are each amended to read  
26 as follows:

27 (1) Except as provided in subsection (2) of this section for claims  
28 filed for occupational hearing loss, claims for occupational disease or  
29 infection to be valid and compensable must be filed within two years  
30 following the date the worker had written notice from a physician or a  
31 licensed advanced registered nurse practitioner: (a) Of the existence  
32 of his or her occupational disease, and (b) that a claim for disability  
33 benefits may be filed. The notice shall also contain a statement that  
34 the worker has two years from the date of the notice to file a claim.  
35 If the employer is self-insured, the physician or licensed advanced

1 registered nurse practitioner shall file the notice with the self-  
2 insurer. If the employer is a state fund employer, the physician or  
3 licensed advanced registered nurse practitioner shall file the notice  
4 with the department. The department or self-insurer shall send a copy  
5 to the worker (~~and to the self-insurer if the worker's employer is~~  
6 ~~self-insured~~). However, a claim is valid if it is filed within two  
7 years from the date of death of the worker suffering from an  
8 occupational disease.

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

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

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

19 **Sec. 26.** 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.

36 (2)(a) Except as provided in (b) of this subsection, to be valid  
37 and compensable, claims for hearing loss due to occupational noise

1 exposure must be filed within two years of the date of the worker's  
2 last injurious exposure to occupational noise in employment covered  
3 under this title or within one year of September 10, 2003, whichever is  
4 later.

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

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

9 **Sec. 27.** RCW 51.28.060 and 1977 ex.s. c 350 s 35 are each amended  
10 to read as follows:

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

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

21 **Sec. 28.** RCW 51.28.070 and 1990 c 209 s 2 are each amended to read  
22 as follows:

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

1 department or self-insurer regarding any claim may, at the discretion  
2 of the department or self-insurer, inspect the claim files and records  
3 of injured workers, and other persons may make such inspection, at the  
4 department's or self-insurer's discretion, when such persons are  
5 rendering assistance to the department or self-insurer at any stage of  
6 the proceedings on any matter pertaining to the administration of this  
7 title.

8 **Sec. 29.** RCW 51.32.010 and 1977 ex.s. c 350 s 37 are each amended  
9 to read as follows:

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

25 **Sec. 30.** RCW 51.32.040 and 2003 c 379 s 27 are each amended to  
26 read as follows:

27 (1) Except as provided in RCW 43.20B.720, 72.09.111, 74.20A.260,  
28 and 51.32.380, no money paid or payable under this title shall, before  
29 the issuance and delivery of the check or warrant, be assigned,  
30 charged, or taken in execution, attached, garnished, or pass or be paid  
31 to any other person by operation of law, any form of voluntary  
32 assignment, or power of attorney. Any such assignment or charge is  
33 void unless the transfer is to a financial institution at the request  
34 of a worker or other beneficiary and made in accordance with RCW  
35 51.32.045.

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

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

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

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

37           (b) If any prisoner is injured in the course of his or her  
38 employment while participating in a work or training release program



1 authorized by chapter 72.65 RCW and is subject to the provisions of  
2 this title, he or she is entitled to payments under this title, subject  
3 to the requirements of chapter 72.65 RCW, unless his or her  
4 participation in the program has been canceled, or unless he or she is  
5 returned to a state correctional institution, as defined in RCW  
6 72.65.010(3), as a result of revocation of parole or new sentence.

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

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

15 **Sec. 31.** RCW 51.32.055 and 2004 c 65 s 8 are each amended to read  
16 as follows:

17 (1) One purpose of this title is to restore the injured worker as  
18 nearly as possible to the condition of self-support as an able-bodied  
19 worker. Claims shall be closed and benefits for permanent disability  
20 shall be determined ((under the director's supervision, except as  
21 otherwise authorized in subsection (9) of this section,)) only after  
22 the injured worker's condition becomes fixed.

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

35 (3) ~~A request for determination of permanent disability shall be~~  
36 ~~examined by the department or, if authorized in subsection (9) of this~~  
37 ~~section, the self insurer, and the department shall issue an order in~~

1 accordance with RCW 51.52.050 or, in the case of a self-insured  
2 employer, the self-insurer may: (a) Enter a written order,  
3 communicated to the worker and the department self-insurance section in  
4 accordance with subsection (9) of this section, or (b) request the  
5 department to issue an order in accordance with RCW 51.52.050.

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

18 ~~((+5))~~ (3) The director may establish a medical bureau within the  
19 department to perform medical examinations under this section.  
20 Physicians hired or retained for this purpose shall be grounded in  
21 industrial medicine and in the assessment of industrial physical  
22 impairment. ~~((Self-insurers shall bear a proportionate share of the~~  
23 ~~cost of the medical bureau in a manner to be determined by the~~  
24 ~~department.~~

25 ~~(+6))~~ (4) Where a dispute arises from the handling of any state  
26 fund claim before the condition of the injured worker becomes fixed,  
27 the worker~~((7))~~ or employer~~((7 or self-insurer))~~ may request the  
28 department to resolve the dispute or the director may initiate an  
29 inquiry on his or her own motion. In these cases, the department shall  
30 proceed as provided in this section and an order shall issue in  
31 accordance with RCW 51.52.050.

32 ~~((7)(a) If a claim (i) is accepted by a self-insurer after June~~  
33 ~~30, 1986, and before August 1, 1997, (ii) involves only medical~~  
34 ~~treatment and the payment of temporary disability compensation under~~  
35 ~~RCW 51.32.090 or only the payment of temporary disability compensation~~  
36 ~~under RCW 51.32.090, (iii) at the time medical treatment is concluded~~  
37 ~~does not involve permanent disability, (iv) is one with respect to~~  
38 ~~which the department has not intervened under subsection (6) of this~~

1 ~~section, and (v) the injured worker has returned to work with the self-~~  
2 ~~insured employer of record, whether at the worker's previous job or at~~  
3 ~~a job that has comparable wages and benefits, the claim may be closed~~  
4 ~~by the self-insurer, subject to reporting of claims to the department~~  
5 ~~in a manner prescribed by department rules adopted under chapter 34.05~~  
6 ~~RCW.~~

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

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

23 ~~(8)(a) If a claim (i) is accepted by a self-insurer after June 30,~~  
24 ~~1990, and before August 1, 1997, (ii) involves only medical treatment,~~  
25 ~~(iii) does not involve payment of temporary disability compensation~~  
26 ~~under RCW 51.32.090, and (iv) at the time medical treatment is~~  
27 ~~concluded does not involve permanent disability, the claim may be~~  
28 ~~closed by the self-insurer, subject to reporting of claims to the~~  
29 ~~department in a manner prescribed by department rules adopted under~~  
30 ~~chapter 34.05 RCW. Upon closure of a claim, the self-insurer shall~~  
31 ~~enter a written order, communicated to the worker, which contains the~~  
32 ~~following statement clearly set forth in bold face type: "This order~~  
33 ~~constitutes notification that your claim is being closed with medical~~  
34 ~~benefits only, as provided. If for any reason you disagree with this~~  
35 ~~closure, you must protest in writing to the Department of Labor and~~  
36 ~~Industries, Olympia, within 60 days of the date you received this~~  
37 ~~order. The department will then review your claim and enter a further~~  
38 ~~determinative order."~~

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

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

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

34       ~~(c) Upon closure of a claim under this subsection (9), the self-~~  
35 ~~insurer shall enter a written order, communicated to the worker and the~~  
36 ~~department self insurance section, which contains the following~~  
37 ~~statement clearly set forth in bold face type: "This order constitutes~~  
38 ~~notification that your claim is being closed with such medical benefits~~

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

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

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

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

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

36 **Sec. 32.** RCW 51.32.055 and 1997 c 416 s 1 are each amended to read  
37 as follows:

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

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

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

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

1       ~~((5))~~ (3) The director may establish a medical bureau within the  
2 department to perform medical examinations under this section.  
3 Physicians hired or retained for this purpose shall be grounded in  
4 industrial medicine and in the assessment of industrial physical  
5 impairment. ~~((Self insurers shall bear a proportionate share of the  
6 cost of the medical bureau in a manner to be determined by the  
7 department.~~

8       ~~(6))~~ (4) Where a dispute arises from the handling of any state  
9 fund claim before the condition of the injured worker becomes fixed,  
10 the worker~~((7))~~ or employer~~((7 or self insurer))~~ may request the  
11 department to resolve the dispute or the director may initiate an  
12 inquiry on his or her own motion. In these cases, the department shall  
13 proceed as provided in this section and an order shall issue in  
14 accordance with RCW 51.52.050.

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

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

32       ~~(c) Upon closure of a claim under (a) of this subsection, the self-  
33 insurer shall enter a written order, communicated to the worker and the  
34 department self insurance section, which contains the following  
35 statement clearly set forth in bold face type: "This order constitutes  
36 notification that your claim is being closed with medical benefits and  
37 temporary disability compensation only as provided, and with the  
38 condition you have returned to work with the self insured employer. If~~

1 ~~for any reason you disagree with the conditions or duration of your~~  
2 ~~return to work or the medical benefits or the temporary disability~~  
3 ~~compensation that has been provided, you must protest in writing to the~~  
4 ~~department of labor and industries, self insurance section, within~~  
5 ~~sixty days of the date you received this order."~~

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

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

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



1 by the self-insurer, subject to reporting of claims to the department  
2 in a manner prescribed by department rules adopted under chapter 34.05  
3 RCW.

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

15 (c) Upon closure of a claim under this subsection (9), 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 such medical benefits  
20 and temporary disability compensation as provided to date and with such  
21 award for permanent partial disability, if any, as set forth below, and  
22 with the condition that you have returned to work with the self-insured  
23 employer. If for any reason you disagree with the conditions or  
24 duration of your return to work or the medical benefits, temporary  
25 disability compensation provided, or permanent partial disability that  
26 has been awarded, you must protest in writing to the Department of  
27 Labor and Industries, Self-Insurance Section, within sixty days of the  
28 date you received this order. If you do not protest this order to the  
29 department, this order will become final."

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

35 (10) If the department receives a protest of an order issued by a  
36 self-insurer under subsections (7) through (9) of this section, the  
37 self-insurer's closure order must be held in abeyance. The department  
38 shall review the claim closure action and enter a further determinative

1 ~~order as provided for in RCW 51.52.050. If no protest is timely filed,~~  
2 ~~the closing order issued by the self insurer shall become final and~~  
3 ~~shall have the same force and effect as a department order that has~~  
4 ~~become final under RCW 51.52.050.~~

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

13 ~~(12) For the purposes of this section, "comparable wages and~~  
14 ~~benefits" means wages and benefits that are at least ninety five~~  
15 ~~percent of the wages and benefits received by the worker at the time of~~  
16 ~~injury.)~~

17 **Sec. 33.** RCW 51.32.060 and 1993 c 521 s 2 are each amended to read  
18 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (3) In case of permanent total disability, if the character of the  
26 injury is such as to render the worker so physically helpless as to  
27 require the hiring of the services of an attendant, the department  
28 shall make monthly payments to such attendant for such services as long  
29 as such requirement continues, but such payments shall not obtain or be  
30 operative while the worker is receiving care under or pursuant to the  
31 provisions of chapter 51.36 RCW and RCW 51.04.105.

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

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

1	AFTER	PERCENTAGE
2	June 30, 1993	105%
3	June 30, 1994	110%
4	June 30, 1995	115%
5	June 30, 1996	120%

6 The limitations under this subsection shall not apply to the  
7 payments provided for in subsection (3) of this section.

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

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

15 **Sec. 34.** RCW 51.32.080 and 1993 c 520 s 1 are each amended to read  
16 as follows:

17 (1)(a) Until July 1, 1993, for the permanent partial disabilities  
18 here specifically described, the injured worker shall receive  
19 compensation as follows:

20	LOSS BY AMPUTATION	
21	Of leg above the knee joint with short	
22	thigh stump (3" or less below the	
23	tuberosity of ischium).....	\$54,000.00
24	Of leg at or above knee joint with	
25	functional stump.....	48,600.00
26	Of leg below knee joint.....	43,200.00
27	Of leg at ankle (Syme).....	37,800.00
28	Of foot at mid-metatarsals.....	18,900.00
29	Of great toe with resection of metatarsal	
30	bone.....	11,340.00
31	Of great toe at metatarsophalangeal	
32	joint.....	6,804.00

1	Of great toe at interphalangeal joint . . . . .	3,600.00
2	Of lesser toe (2nd to 5th) with resection of	
3	metatarsal bone . . . . .	4,140.00
4	Of lesser toe at metatarsophalangeal	
5	joint . . . . .	2,016.00
6	Of lesser toe at proximal interphalangeal	
7	joint . . . . .	1,494.00
8	Of lesser toe at distal interphalangeal	
9	joint . . . . .	378.00
10	Of arm at or above the deltoid insertion or	
11	by disarticulation at the shoulder . . . . .	54,000.00
12	Of arm at any point from below the deltoid	
13	insertion to below the elbow joint at	
14	the insertion of the biceps tendon . . . . .	51,300.00
15	Of arm at any point from below the elbow	
16	joint distal to the insertion of the	
17	biceps tendon to and including	
18	mid-metacarpal amputation of the	
19	hand . . . . .	48,600.00
20	Of all fingers except the thumb at	
21	metacarpophalangeal joints . . . . .	29,160.00
22	Of thumb at metacarpophalangeal joint or	
23	with resection of carpometacarpal	
24	bone . . . . .	19,440.00
25	Of thumb at interphalangeal joint . . . . .	9,720.00
26	Of index finger at metacarpophalangeal	
27	joint or with resection of metacarpal	
28	bone . . . . .	12,150.00
29	Of index finger at proximal	
30	interphalangeal joint . . . . .	9,720.00
31	Of index finger at distal interphalangeal	
32	joint . . . . .	5,346.00
33	Of middle finger at metacarpophalangeal	
34	joint or with resection of metacarpal	
35	bone . . . . .	9,720.00
36	Of middle finger at proximal	
37	interphalangeal joint . . . . .	7,776.00

1	Of middle finger at distal interphalangeal	
2	joint .....	4,374.00
3	Of ring finger at metacarpophalangeal	
4	joint or with resection of metacarpal	
5	bone .....	4,860.00
6	Of ring finger at proximal interphalangeal	
7	joint .....	3,888.00
8	Of ring finger at distal interphalangeal	
9	joint .....	2,430.00
10	Of little finger at metacarpophalangeal	
11	joint or with resection of metacarpal	
12	bone .....	2,430.00
13	Of little finger at proximal interphalangeal	
14	joint .....	1,944.00
15	Of little finger at distal interphalangeal	
16	joint .....	972.00

17 MISCELLANEOUS

18	Loss of one eye by enucleation .....	21,600.00
19	Loss of central visual acuity in one eye ...	18,000.00
20	Complete loss of hearing in both ears ....	43,200.00
21	Complete loss of hearing in one ear .....	7,200.00

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

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

27 (ii) Beginning on July 1, 1994, and each July 1 thereafter, the  
 28 compensation amounts for the specified disabilities listed in (a) of  
 29 this subsection, as adjusted under (b)(i) of this subsection, shall be  
 30 readjusted to reflect the percentage change in the consumer price  
 31 index, calculated as follows: The index for the calendar year  
 32 preceding the year in which the July calculation is made, to be known  
 33 as "calendar year A," is divided by the index for the calendar year  
 34 preceding calendar year A, and the resulting ratio is multiplied by the  
 35 compensation amount in effect on June 30 immediately preceding the July  
 36 1st on which the respective calculation is made. For the purposes of

1 this subsection, "index" means the same as the definition in RCW  
2 2.12.037(1).

3 (2) Compensation for amputation of a member or part thereof at a  
4 site other than those specified in subsection (1) of this section, and  
5 for loss of central visual acuity and loss of hearing other than  
6 complete, shall be in proportion to that which such other amputation or  
7 partial loss of visual acuity or hearing most closely resembles and  
8 approximates. Compensation shall be calculated based on the adjusted  
9 schedule of compensation in effect for the respective time period as  
10 prescribed in subsection (1) of this section.

11 (3)(a) Compensation for any other permanent partial disability not  
12 involving amputation shall be in the proportion which the extent of  
13 such other disability, called unspecified disability, shall bear to the  
14 disabilities specified in subsection (1) of this section, which most  
15 closely resembles and approximates in degree of disability such other  
16 disability, and compensation for any other unspecified permanent  
17 partial disability shall be in an amount as measured and compared to  
18 total bodily impairment. To reduce litigation and establish more  
19 certainty and uniformity in the rating of unspecified permanent partial  
20 disabilities, the department shall enact rules having the force of law  
21 classifying such disabilities in the proportion which the department  
22 shall determine such disabilities reasonably bear to total bodily  
23 impairment. In enacting such rules, the department shall give  
24 consideration to, but need not necessarily adopt, any nationally  
25 recognized medical standards or guides for determining various bodily  
26 impairments.

27 (b) Until July 1, 1993, for purposes of calculating monetary  
28 benefits under (a) of this subsection, the amount payable for total  
29 bodily impairment shall be deemed to be ninety thousand dollars.  
30 Beginning on July 1, 1993, for purposes of calculating monetary  
31 benefits under (a) of this subsection, the amount payable for total  
32 bodily impairment shall be adjusted as follows:

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

36 (ii) Beginning on July 1, 1994, and each July 1 thereafter, the  
37 amount payable for total bodily impairment prescribed in (b)(i) of this

1 subsection shall be adjusted as provided in subsection (1)(b)(ii) of  
2 this section.

3 (c) Until July 1, 1993, the total compensation for all unspecified  
4 permanent partial disabilities resulting from the same injury shall not  
5 exceed the sum of ninety thousand dollars. Beginning on July 1, 1993,  
6 total compensation for all unspecified permanent partial disabilities  
7 resulting from the same injury shall not exceed a sum calculated as  
8 follows:

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

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

14 (4) If permanent partial disability compensation is followed by  
15 permanent total disability compensation, any portion of the permanent  
16 partial disability compensation which exceeds the amount that would  
17 have been paid the injured worker if permanent total disability  
18 compensation had been paid in the first instance, shall be deducted  
19 from the pension reserve of such injured worker and his or her monthly  
20 compensation payments shall be reduced accordingly.

21 (5) Should a worker receive an injury to a member or part of his or  
22 her body already, from whatever cause, permanently partially disabled,  
23 resulting in the amputation thereof or in an aggravation or increase in  
24 such permanent partial disability but not resulting in the permanent  
25 total disability of such worker, his or her compensation for such  
26 partial disability shall be adjudged with regard to the previous  
27 disability of the injured member or part and the degree or extent of  
28 the aggravation or increase of disability thereof.

29 (6) When the compensation provided for in subsections (1) through  
30 (3) of this section exceeds three times the average monthly wage in the  
31 state as computed under the provisions of RCW 51.08.018, payment shall  
32 be made in monthly payments in accordance with the schedule of  
33 temporary total disability payments set forth in RCW 51.32.090 until  
34 such compensation is paid to the injured worker in full, except that  
35 the first monthly payment shall be in an amount equal to three times  
36 the average monthly wage in the state as computed under the provisions  
37 of RCW 51.08.018, and interest shall be paid at the rate of eight  
38 percent on the unpaid balance of such compensation commencing with the



1 second monthly payment. However, upon application of the injured  
2 worker or survivor the monthly payment may be converted, in whole or in  
3 part, into a lump sum payment, in which event the monthly payment shall  
4 cease in whole or in part. Such conversion may be made only upon  
5 written application of the injured worker or survivor to the department  
6 or self-insurer, as the case may be, and shall rest in the discretion  
7 of the department or self-insurer, as the case may be, depending upon  
8 the merits of each individual application. Upon the death of a worker  
9 all unpaid installments accrued shall be paid according to the payment  
10 schedule established prior to the death of the worker to the widow or  
11 widower, or if there is no widow or widower surviving, to the dependent  
12 children of such claimant, and if there are no such dependent children,  
13 then to such other dependents as defined by this title.

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

16 **Sec. 35.** RCW 51.32.095 and 2004 c 65 s 10 are each amended to read  
17 as follows:

18 (1) One of the primary purposes of this title is to enable the  
19 injured worker to become employable at gainful employment. To this  
20 end, the department or self-insurers, as the case may be, shall utilize  
21 the services of individuals and organizations, public or private, whose  
22 experience, training, and interests in vocational rehabilitation and  
23 retraining qualify them to lend expert assistance to the supervisor of  
24 industrial insurance or self-insurers in such programs of vocational  
25 rehabilitation as may be reasonable to make the worker employable  
26 consistent with his or her physical and mental status. Where, after  
27 evaluation and recommendation by such individuals or organizations and  
28 prior to final evaluation of the worker's permanent disability and in  
29 the sole opinion of the supervisor or supervisor's designee, or self-  
30 insurer, as the case may be, whether or not medical treatment has been  
31 concluded, vocational rehabilitation is both necessary and likely to  
32 enable the injured worker to become employable at gainful employment,  
33 the supervisor or supervisor's designee may, in his or her sole  
34 discretion, pay or, if the employer is a self-insurer, (~~direct~~) the  
35 self-insurer (~~to~~) may pay the cost as provided in subsection (3) of  
36 this section.

1 (2) When in the sole discretion of the supervisor or the  
2 supervisor's designee, or the self-insurer, as the case may be,  
3 vocational rehabilitation is both necessary and likely to make the  
4 worker employable at gainful employment, then the following order of  
5 priorities shall be used:

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

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

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

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

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

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

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

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

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

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

30 (b) Beginning with vocational rehabilitation plans approved on or  
31 after July 1, 1999, costs for vocational rehabilitation benefits  
32 allowed (~~((by the supervisor or supervisor's designee))~~) under subsection  
33 (1) of this section may include the cost of books, tuition, fees,  
34 supplies, equipment, child or dependent care, and other necessary  
35 expenses for any such worker in an amount not to exceed four thousand  
36 dollars in any fifty-two week period (~~((except as authorized by RCW~~  
37 ~~51.60.060))~~), and the cost of transportation and continuing the

1 temporary total disability compensation under RCW 51.32.090 while the  
2 worker is actively and successfully undergoing a formal program of  
3 vocational rehabilitation.

4 (c) The expenses allowed under (a) or (b) of this subsection may  
5 include training fees for on-the-job training and the cost of  
6 furnishing tools and other equipment necessary for self-employment or  
7 reemployment. However, compensation or payment of retraining with job  
8 placement expenses under (a) or (b) of this subsection may not be  
9 authorized for a period of more than fifty-two weeks, except that such  
10 period may, in the sole discretion of the supervisor or self-insurer  
11 after (~~his or her~~) review, be extended for an additional fifty-two  
12 weeks or portion thereof by written order of the supervisor or self-  
13 insurer, as the case may be.

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

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

20 (4) In addition to the vocational rehabilitation expenditures  
21 provided for under subsection (3) of this section, an additional five  
22 thousand dollars may, upon authorization of the supervisor or the  
23 supervisor's designee, or self-insurer, as the case may be, be expended  
24 for: (a) Accommodations for an injured worker that are medically  
25 necessary for the worker to participate in an approved retraining plan;  
26 and (b) accommodations necessary to perform the essential functions of  
27 an occupation in which an injured worker is seeking employment,  
28 consistent with the retraining plan or the recommendations of a  
29 vocational evaluation. The injured worker's attending physician or  
30 licensed advanced registered nurse practitioner must verify the  
31 necessity of the modifications or accommodations. The total  
32 expenditures authorized in this subsection and the expenditures  
33 authorized under RCW 51.32.250 shall not exceed five thousand dollars.

34 (5) The department shall establish criteria to monitor the quality  
35 and effectiveness of rehabilitation services provided by the  
36 individuals and organizations used under subsection (1) of this  
37 section. The state fund shall make referrals for vocational  
38 rehabilitation services based on these performance criteria.

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

4 ~~((The benefits in this section shall be provided for the  
5 injured workers of self-insured employers.))~~ Self-insurers shall  
6 ~~((report both benefits provided and benefits denied under this section  
7 in the manner prescribed by the department by rule adopted under  
8 chapter 34.05 RCW.))~~ issue a written determination providing or denying  
9 benefits under this section. The determination shall state, in bold-  
10 faced type of at least ten-point font, that such determination becomes  
11 final within fifteen days from the date the determination is  
12 communicated to the parties unless a written protest is filed with the  
13 director in Olympia. The self-insurer's determination may not be  
14 appealed to the board of industrial insurance appeals. If a worker  
15 timely protests a determination issued by a self-insured employer under  
16 this section, the director may~~((, in his or her sole discretion and  
17 upon his or her own initiative or at any time that a dispute arises  
18 under this section,))~~ promptly make such inquiries as circumstances  
19 require ~~((and))~~, take such other action as he or she considers will  
20 properly determine the matter and protect the rights of the parties,  
21 and determine whether, in the director's sole discretion, vocational  
22 rehabilitation is both necessary and likely to make the worker  
23 employable at gainful employment.

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

28 **Sec. 36.** RCW 51.32.095 and 1999 c 110 s 1 are each amended to read  
29 as follows:

30 (1) One of the primary purposes of this title is to enable the  
31 injured worker to become employable at gainful employment. To this  
32 end, the department or self-insurers, as the case may be, shall utilize  
33 the services of individuals and organizations, public or private, whose  
34 experience, training, and interests in vocational rehabilitation and  
35 retraining qualify them to lend expert assistance to the supervisor of  
36 industrial insurance or self-insurers in such programs of vocational  
37 rehabilitation as may be reasonable to make the worker employable

1 consistent with his or her physical and mental status. Where, after  
2 evaluation and recommendation by such individuals or organizations and  
3 prior to final evaluation of the worker's permanent disability and in  
4 the sole opinion of the supervisor or supervisor's designee, or self-  
5 insurer, as the case may be, whether or not medical treatment has been  
6 concluded, vocational rehabilitation is both necessary and likely to  
7 enable the injured worker to become employable at gainful employment,  
8 the supervisor or supervisor's designee may, in his or her sole  
9 discretion, pay or, if the employer is a self-insurer, (~~direct~~) the  
10 self-insurer (~~to~~) may pay the cost as provided in subsection (3) of  
11 this section.

12 (2) When in the sole discretion of the supervisor or the  
13 supervisor's designee, or the self-insurer, as the case may be,  
14 vocational rehabilitation is both necessary and likely to make the  
15 worker employable at gainful employment, then the following order of  
16 priorities shall be used:

- 17 (a) Return to the previous job with the same employer;  
18 (b) Modification of the previous job with the same employer  
19 including transitional return to work;  
20 (c) A new job with the same employer in keeping with any  
21 limitations or restrictions;  
22 (d) Modification of a new job with the same employer including  
23 transitional return to work;  
24 (e) Modification of the previous job with a new employer;  
25 (f) A new job with a new employer or self-employment based upon  
26 transferable skills;  
27 (g) Modification of a new job with a new employer;  
28 (h) A new job with a new employer or self-employment involving on-  
29 the-job training;  
30 (i) Short-term retraining and job placement.

31 (3)(a) Except as provided in (b) of this subsection, costs for  
32 vocational rehabilitation benefits allowed (~~by the supervisor or~~  
33 ~~supervisor's designee~~) under subsection (1) of this section may  
34 include the cost of books, tuition, fees, supplies, equipment,  
35 transportation, child or dependent care, and other necessary expenses  
36 for any such worker in an amount not to exceed three thousand dollars  
37 in any fifty-two week period (~~except as authorized by RCW 51.60.060~~),

1 and the cost of continuing the temporary total disability compensation  
2 under RCW 51.32.090 while the worker is actively and successfully  
3 undergoing a formal program of vocational rehabilitation.

4 (b) Beginning with vocational rehabilitation plans approved on or  
5 after July 1, 1999, costs for vocational rehabilitation benefits  
6 allowed (~~((by the supervisor or supervisor's designee))~~) under subsection  
7 (1) of this section may include the cost of books, tuition, fees,  
8 supplies, equipment, child or dependent care, and other necessary  
9 expenses for any such worker in an amount not to exceed four thousand  
10 dollars in any fifty-two week period (~~((except as authorized by RCW  
11 51.60.060))~~), and the cost of transportation and continuing the  
12 temporary total disability compensation under RCW 51.32.090 while the  
13 worker is actively and successfully undergoing a formal program of  
14 vocational rehabilitation.

15 (c) The expenses allowed under (a) or (b) of this subsection may  
16 include training fees for on-the-job training and the cost of  
17 furnishing tools and other equipment necessary for self-employment or  
18 reemployment. However, compensation or payment of retraining with job  
19 placement expenses under (a) or (b) of this subsection may not be  
20 authorized for a period of more than fifty-two weeks, except that such  
21 period may, in the sole discretion of the supervisor or self-insurer  
22 after (~~((his or her))~~) review, be extended for an additional fifty-two  
23 weeks or portion thereof by written order of the supervisor or self-  
24 insurer, as the case may be.

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

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

31 (4) In addition to the vocational rehabilitation expenditures  
32 provided for under subsection (3) of this section, an additional five  
33 thousand dollars may, upon authorization of the supervisor or the  
34 supervisor's designee, or self-insurer, as the case may be, be expended  
35 for: (a) Accommodations for an injured worker that are medically  
36 necessary for the worker to participate in an approved retraining plan;  
37 and (b) accommodations necessary to perform the essential functions of  
38 an occupation in which an injured worker is seeking employment,

1 consistent with the retraining plan or the recommendations of a  
2 vocational evaluation. The injured worker's attending physician must  
3 verify the necessity of the modifications or accommodations. The total  
4 expenditures authorized in this subsection and the expenditures  
5 authorized under RCW 51.32.250 shall not exceed five thousand dollars.

6 (5) The department shall establish criteria to monitor the quality  
7 and effectiveness of rehabilitation services provided by the  
8 individuals and organizations used under subsection (1) of this  
9 section. The state fund shall make referrals for vocational  
10 rehabilitation services based on these performance criteria.

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

14 (7) (~~The benefits in this section shall be provided for the~~  
15 ~~injured workers of self-insured employers.~~) Self-insurers shall  
16 (~~report both benefits provided and benefits denied under this section~~  
17 ~~in the manner prescribed by the department by rule adopted under~~  
18 ~~chapter 34.05 RCW.~~) issue a written determination providing or denying  
19 benefits under this section. The determination shall state, in bold-  
20 faced type of at least ten-point font, that such determination becomes  
21 final within fifteen days from the date the determination is  
22 communicated to the parties unless a written protest is filed with the  
23 director in Olympia. The self-insurer's determination may not be  
24 appealed to the board of industrial insurance appeals. If a worker  
25 timely protests a determination issued by a self-insured employer under  
26 this section, the director may(~~, in his or her sole discretion and~~  
27 ~~upon his or her own initiative or at any time that a dispute arises~~  
28 ~~under this section,~~) promptly make such inquiries as circumstances  
29 require (~~and~~), take such other action as he or she considers will  
30 properly determine the matter and protect the rights of the parties,  
31 and determine whether, in the director's sole discretion, vocational  
32 rehabilitation is both necessary and likely to make the worker  
33 employable at gainful employment.

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

1       **Sec. 37.** RCW 51.32.110 and 1997 c 325 s 3 are each amended to read  
2 as follows:

3       (1) Any worker entitled to receive any benefits or claiming such  
4 under this title shall, if requested by the department or self-insurer,  
5 submit himself or herself for medical examination, at a time and from  
6 time to time, at a place reasonably convenient for the worker and as  
7 may be provided by the rules of the department. An injured worker,  
8 whether an alien or other injured worker, who is not residing in the  
9 United States at the time that a medical examination is requested may  
10 be required to submit to an examination at any location in the United  
11 States determined by the department or self-insurer.

12       (2) If the worker refuses to submit to medical examination, or  
13 obstructs the same, or, if any injured worker shall persist in  
14 unsanitary or injurious practices which tend to imperil or retard his  
15 or her recovery, or shall refuse to submit to such medical or surgical  
16 treatment as is reasonably essential to his or her recovery or refuse  
17 or obstruct evaluation or examination for the purpose of vocational  
18 rehabilitation or does not cooperate in reasonable efforts at such  
19 rehabilitation, the department or the self-insurer (~~((upon approval by~~  
20 ~~the department))~~), as the case may be, with notice to the worker may  
21 suspend any further action on any claim of such worker so long as such  
22 refusal, obstruction, noncooperation, or practice continues and reduce,  
23 suspend, or deny any compensation for such period(~~((: PROVIDED, That))~~).  
24 However, the department or the self-insurer shall not suspend any  
25 further action on any claim of a worker or reduce, suspend, or deny any  
26 compensation if a worker has good cause for refusing to submit to or to  
27 obstruct any examination, evaluation, treatment, or practice requested  
28 by the department or self-insurer or required under this section.

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

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

36       (i) In the case of a worker insured by the department, the worker  
37 shall be paid compensation out of the accident fund in an amount equal



1 to his or her usual wages for the time lost from work while attending  
2 the medical examination; or

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

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

8 **Sec. 38.** RCW 51.32.160 and 1995 c 253 s 2 are each amended to read  
9 as follows:

10 (1)(a) If aggravation, diminution, or termination of disability  
11 takes place, the ~~((director))~~ department or self-insurer, as the case  
12 may be, may, upon the application of the beneficiary to the department  
13 or self-insurer, as the case may be, made within seven years from the  
14 date the first closing order becomes final, or at any time upon ~~((his~~  
15 ~~or her own))~~ the director's or self-insurer's motion, as the case may  
16 be, readjust the rate of compensation in accordance with the rules in  
17 this section provided for the same, or in a proper case terminate the  
18 payment~~((: PROVIDED, That))~~. However, the ~~((director))~~ department or  
19 self-insurer, as the case may be, may, upon application of the worker  
20 made at any time, provide proper and necessary medical and surgical  
21 services as authorized under RCW 51.36.010. The department shall  
22 promptly mail a copy of the application to the state fund employer at  
23 the employer's last known address as shown by the records of the  
24 department.

25 (b) "Closing order" as used in this section means an order based on  
26 factors which include medical recommendation, advice, or examination.

27 (c) Applications for benefits where the claim has been closed  
28 without medical recommendation, advice, or examination are not subject  
29 to the seven year limitation of this section. The preceding sentence  
30 shall not apply to any closing order issued prior to July 1, 1981.  
31 First closing orders issued between July 1, 1981, and July 1, 1985,  
32 shall, for the purposes of this section only, be deemed issued on July  
33 1, 1985. The time limitation of this section shall be ten years in  
34 claims involving loss of vision or function of the eyes.

35 (d) If an order denying an application to reopen filed on or after  
36 July 1, 1988, is not issued within ninety days of receipt of such  
37 application by the self-insured employer or the department, as the case

1 may be, such application shall be deemed granted. However, for good  
2 cause, the department or self-insurer, as the case may be, may extend  
3 the time for making the final determination on the application for an  
4 additional sixty days.

5 (2) If a worker receiving a pension for total disability returns to  
6 gainful employment for wages, the director may suspend or terminate the  
7 rate of compensation established for the disability without producing  
8 medical evidence that shows that a diminution of the disability has  
9 occurred.

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

14 **Sec. 39.** RCW 51.32.195 and 1987 c 290 s 1 are each amended to read  
15 as follows:

16 On any industrial injury claim where (~~the~~) a self-insured  
17 (~~employer or injured worker has requested a determination by the~~  
18 ~~department~~) employer's order has been protested, the self-insurer must  
19 submit (~~all medical reports and any other specified information not~~  
20 ~~previously submitted~~) the claim file to the department. When the  
21 department requests information from a self-insurer by certified mail,  
22 the self-insurer shall submit all information in its possession  
23 concerning a claim within ten working days from the date of receipt of  
24 such certified notice.

25 **Sec. 40.** RCW 51.32.210 and 1977 ex.s. c 350 s 55 are each amended  
26 to read as follows:

27 Claims of injured workers (~~of employers who have secured the~~  
28 ~~payment of compensation by insuring with the department~~) shall be  
29 promptly acted upon by the department or self-insurer, as the case may  
30 be. Where temporary disability compensation is payable, the first  
31 payment thereof shall be mailed within fourteen days after receipt of  
32 the claim at the department (~~'s offices in Olympia~~) or self-insurer,  
33 as the case may be, and shall continue at regular semimonthly or  
34 biweekly intervals. The payment of this or any other benefits under  
35 this title, prior to the entry of an order (~~by the department~~) in  
36 accordance with RCW 51.52.050 (~~as now or hereafter amended~~), shall be

1 not considered a binding determination of the obligations of the  
2 department or self-insurer, as the case may be, under this title. The  
3 acceptance of compensation by the worker or his or her beneficiaries  
4 prior to such order shall likewise not be considered a binding  
5 determination of their rights under this title.

6 **Sec. 41.** RCW 51.32.240 and 2004 c 243 s 7 are each amended to read  
7 as follows:

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

19 (b) Except as provided in subsections (3), (4), and (5) of this  
20 section, the department or self-insurer, as the case may be, may only  
21 assess an overpayment of benefits because of adjudicator error when the  
22 order upon which the overpayment is based is not yet final as provided  
23 in RCW 51.52.050 and 51.52.060. "Adjudicator error" includes the  
24 failure to consider information in the claim file, failure to secure  
25 adequate information, or an error in judgment.

26 (c) The director or self-insurer, as the case may be, pursuant to  
27 rules adopted in accordance with the procedures provided in the  
28 administrative procedure act, chapter 34.05 RCW, may exercise ((his))  
29 discretion to waive, in whole or in part, the amount of any such timely  
30 claim where the recovery would be against equity and good conscience.

31 (2) Whenever the department or self-insurer, as the case may be,  
32 fails to pay benefits because of clerical error, mistake of identity,  
33 or innocent misrepresentation, all not induced by recipient willful  
34 misrepresentation, the recipient may request an adjustment of benefits  
35 to be paid from the state fund or by the self-insurer, as the case may  
36 be, subject to the following:

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

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

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

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

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

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

16 (i) Willful false statement; or

17 (ii) Willful misrepresentation, omission, or concealment of any  
18 material fact.

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

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

26 (e) For purposes of this subsection (5), a material fact is one  
27 which would result in additional, increased, or continued benefits,  
28 including but not limited to facts about physical restrictions, or  
29 work-type activities which either result in wages or income or would be  
30 reasonably expected to do so. Wages or income include the receipt of  
31 any goods or services. For a work-type activity to be reasonably  
32 expected to result in wages or income, a pattern of repeated activity  
33 must exist. For those activities that would reasonably be expected to  
34 result in wages or produce income, but for which actual wage or income  
35 information cannot be reasonably determined, the department or self-  
36 insurer shall impute wages pursuant to RCW 51.08.178(4).

37 (6) The worker, beneficiary, or other person affected thereby shall  
38 have the right to contest an order assessing an overpayment pursuant to

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

30 The director, director's designee, or self-insurer, as the case may  
31 be, may issue to any person, firm, corporation, municipal corporation,  
32 political subdivision of the state, public corporation, or agency of  
33 the state, a notice to withhold and deliver property of any kind if  
34 there is reason to believe that there is in the possession of such  
35 person, firm, corporation, municipal corporation, political subdivision  
36 of the state, public corporation, or agency of the state, property that  
37 is due, owing, or belonging to any worker, beneficiary, or other person  
38 upon whom a warrant has been served for payments due the department or

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

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

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

32 **Sec. 42.** RCW 51.36.010 and 2004 c 65 s 11 are each amended to read  
33 as follows:

34 Upon the occurrence of any injury to a worker entitled to  
35 compensation under the provisions of this title, he or she shall  
36 receive proper and necessary medical and surgical services at the hands  
37 of a physician or licensed advanced registered nurse practitioner of

1 his or her own choice, if conveniently located, and proper and  
2 necessary hospital care and services during the period of his or her  
3 disability from such injury, but the same shall be limited in point of  
4 duration as follows:

5 In the case of permanent partial disability, not to extend beyond  
6 the date when compensation shall be awarded him or her, except when the  
7 worker returned to work before permanent partial disability award is  
8 made, in such case not to extend beyond the time when monthly  
9 allowances to him or her shall cease; in case of temporary disability  
10 not to extend beyond the time when monthly allowances to him or her  
11 shall cease(~~(; PROVIDED, That)~~). However, after any injured worker  
12 has returned to his or her work his or her medical and surgical  
13 treatment may be continued if, and so long as, such continuation is  
14 deemed necessary by the supervisor of industrial insurance or self-  
15 insurer, as the case may be, to be necessary to his or her more  
16 complete recovery; in case of a permanent total disability not to  
17 extend beyond the date on which a lump sum settlement is made with him  
18 or her or he or she is placed upon the permanent pension roll(~~(; PROVIDED, HOWEVER, That)~~). The supervisor of industrial insurance or  
19 self-insurer, solely in his or her discretion, may authorize continued  
20 medical and surgical treatment for conditions previously accepted (~~by~~  
21 ~~the department~~) when such medical and surgical treatment is deemed  
22 necessary by the supervisor of industrial insurance or self-insurer to  
23 protect such worker's life or provide for the administration of medical  
24 and therapeutic measures including payment of prescription medications,  
25 but not including those controlled substances currently scheduled by  
26 the state board of pharmacy as Schedule I, II, III, or IV substances  
27 under chapter 69.50 RCW, which are necessary to alleviate continuing  
28 pain which results from the industrial injury. In order to authorize  
29 such continued treatment the written order of the supervisor of  
30 industrial insurance or self-insurer issued in advance of the  
31 continuation shall be necessary. Self-insurers shall issue an order  
32 providing or denying such continued treatment. The order shall state,  
33 in boldface type of at least ten-point font, that such order becomes  
34 final within fifteen days from the date the order is communicated to  
35 the parties unless a written protest is filed with the supervisor of  
36 industrial insurance in Olympia. The self-insurer's order may not be  
37 appealed to the board of industrial insurance appeals. If a worker  
38



1 timely protests an order issued by a self-insurer, the supervisor of  
2 industrial insurance shall promptly make such inquiries as  
3 circumstances require and determine whether, in the supervisor's sole  
4 discretion, such continued treatment is necessary to protect the  
5 worker's life or provide for the administration of medical and  
6 therapeutic measures including payment of prescription medications, but  
7 not including those controlled substances currently scheduled by the  
8 state board of pharmacy as Schedule I, II, III, or IV substances under  
9 chapter 69.50 RCW, which are necessary to alleviate continuing pain  
10 which results from the industrial injury.

11 The supervisor of industrial insurance, the supervisor's designee,  
12 or a self-insurer, as the case may be, in his or her sole discretion,  
13 may authorize inoculation or other immunological treatment in cases in  
14 which a work-related activity has resulted in probable exposure of the  
15 worker to a potential infectious occupational disease. Authorization  
16 of such treatment does not bind the department or self-insurer in any  
17 adjudication of a claim by the same worker or the worker's beneficiary  
18 for an occupational disease.

19 **Sec. 43.** RCW 51.36.010 and 1986 c 58 s 6 are each amended to read  
20 as follows:

21 Upon the occurrence of any injury to a worker entitled to  
22 compensation under the provisions of this title, he or she shall  
23 receive proper and necessary medical and surgical services at the hands  
24 of a physician of his or her own choice, if conveniently located, and  
25 proper and necessary hospital care and services during the period of  
26 his or her disability from such injury, but the same shall be limited  
27 in point of duration as follows:

28 In the case of permanent partial disability, not to extend beyond  
29 the date when compensation shall be awarded him or her, except when the  
30 worker returned to work before permanent partial disability award is  
31 made, in such case not to extend beyond the time when monthly  
32 allowances to him or her shall cease; in case of temporary disability  
33 not to extend beyond the time when monthly allowances to him or her  
34 shall cease(~~(: PROVIDED, That)~~). However, after any injured worker  
35 has returned to his or her work his or her medical and surgical  
36 treatment may be continued if, and so long as, such continuation is  
37 deemed necessary by the supervisor of industrial insurance or self-

1 insurer, as the case may be, to be necessary to his or her more  
2 complete recovery; in case of a permanent total disability not to  
3 extend beyond the date on which a lump sum settlement is made with him  
4 or her or he or she is placed upon the permanent pension roll(~~(+~~  
5 ~~PROVIDED, HOWEVER, That~~)). The supervisor of industrial insurance or  
6 self-insurer, solely in his or her discretion, may authorize continued  
7 medical and surgical treatment for conditions previously accepted (~~by~~  
8 ~~the department~~)) when such medical and surgical treatment is deemed  
9 necessary by the supervisor of industrial insurance or self-insurer to  
10 protect such worker's life or provide for the administration of medical  
11 and therapeutic measures including payment of prescription medications,  
12 but not including those controlled substances currently scheduled by  
13 the state board of pharmacy as Schedule I, II, III, or IV substances  
14 under chapter 69.50 RCW, which are necessary to alleviate continuing  
15 pain which results from the industrial injury. In order to authorize  
16 such continued treatment the written order of the supervisor of  
17 industrial insurance or self-insurer issued in advance of the  
18 continuation shall be necessary. Self-insurers shall issue an order  
19 providing or denying such continued treatment. The order shall state,  
20 in boldface type of at least ten-point font, that such order becomes  
21 final within fifteen days from the date the order is communicated to  
22 the parties unless a written protest is filed with the supervisor of  
23 industrial insurance in Olympia. The self-insurer's order may not be  
24 appealed to the board of industrial insurance appeals. If a worker  
25 timely protests an order issued by a self-insurer, the supervisor of  
26 industrial insurance shall promptly make such inquiries as  
27 circumstances require and determine whether, in the supervisor's sole  
28 discretion, such continued treatment is necessary to protect the  
29 worker's life or provide for the administration of medical and  
30 therapeutic measures including payment of prescription medications, but  
31 not including those controlled substances currently scheduled by the  
32 state board of pharmacy as Schedule I, II, III, or IV substances under  
33 chapter 69.50 RCW, which are necessary to alleviate continuing pain  
34 which results from the industrial injury.

35 The supervisor of industrial insurance, the supervisor's designee,  
36 or a self-insurer, as the case may be, in his or her sole discretion,  
37 may authorize inoculation or other immunological treatment in cases in  
38 which a work-related activity has resulted in probable exposure of the

1 worker to a potential infectious occupational disease. Authorization  
2 of such treatment does not bind the department or self-insurer in any  
3 adjudication of a claim by the same worker or the worker's beneficiary  
4 for an occupational disease.

5 **Sec. 44.** RCW 51.36.015 and 1994 c 94 s 1 are each amended to read  
6 as follows:

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

14 **Sec. 45.** RCW 51.36.020 and 1999 c 395 s 1 are each amended to read  
15 as follows:

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

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

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

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

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

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

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

25 (8)(a) Whenever in the sole discretion of the supervisor or self-  
26 insurer, as the case may be, it is reasonable and necessary to modify  
27 a motor vehicle owned by a worker who has become an amputee or becomes  
28 paralyzed because of an industrial injury, the supervisor (~~may order~~)  
29 or self-insurer may pay up to fifty percent of the state's average  
30 annual wage for one year, as determined under RCW 50.04.355, (~~to be~~  
31 ~~paid by the department or self-insurer~~) toward the costs thereof.

32 (b) In the sole discretion of the supervisor or self-insurer, as  
33 the case may be, after his or her review, the amount paid under this  
34 subsection may be increased by no more than four thousand dollars by  
35 written order (~~of the supervisor~~).

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

1       (10) Self-insurers shall issue a written determination providing or  
2 denying benefits under subsections (7) and (8) of this section. The  
3 determination shall state, in boldface type of at least ten-point font,  
4 that such determination becomes final within fifteen days from the date  
5 the determination is communicated to the parties unless a written  
6 protest is filed with the supervisor of industrial insurance in  
7 Olympia. The self-insurer's determination may not be appealed to the  
8 board of industrial insurance appeals. If a worker timely protests a  
9 determination issued by a self-insured employer under subsections (7)  
10 and (8) of this section, the supervisor may promptly make such  
11 inquiries as are necessary and determine whether, in the supervisor's  
12 sole discretion, such benefits are reasonable and necessary.

13       **Sec. 46.** RCW 51.36.060 and 2004 c 65 s 12 are each amended to read  
14 as follows:

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

29       **Sec. 47.** RCW 51.36.060 and 1991 c 89 s 3 are each amended to read  
30 as follows:

31       Physicians examining or attending injured workers under this title  
32 shall comply with rules and regulations adopted by the director, and  
33 shall make such reports as may be requested by the department or self-  
34 insurer upon the condition or treatment of any such worker, or upon any  
35 other matters concerning such workers in their care. Except under RCW  
36 49.17.210 and 49.17.250, all medical information in the possession or

1 control of any person and relevant to the particular injury in the  
2 opinion of the department or self-insurer pertaining to any worker  
3 whose injury or occupational disease is the basis of a claim under this  
4 title shall be made available at any stage of the proceedings to the  
5 employer, the claimant's representative, and the department upon  
6 request, and no person shall incur any legal liability by reason of  
7 releasing such information.

8 **Sec. 48.** RCW 51.36.070 and 2001 c 152 s 2 are each amended to read  
9 as follows:

10 Whenever the ~~((director))~~ department or the self-insurer, as the  
11 case may be, deems it necessary in order to resolve any medical issue,  
12 a worker shall submit to examination by a physician or physicians  
13 selected by the ~~((director))~~ department or self-insurer, with the  
14 rendition of a report to the person ordering the examination. The  
15 department or self-insurer shall provide the physician performing an  
16 examination with all relevant medical records from the worker's claim  
17 file. ~~((The director, in his or her discretion, may charge))~~ The cost  
18 of such examination ~~((or examinations to the self-insurer or to the~~  
19 ~~medical aid fund as the case may be))~~ shall be borne by the self-  
20 insurer in a self-insured claim. The cost of said examination shall  
21 include payment to the worker of reasonable expenses connected  
22 therewith.

23 **Sec. 49.** RCW 51.48.017 and 1985 c 347 s 3 are each amended to read  
24 as follows:

25 (1) If a self-insurer unreasonably delays or refuses to ~~((pay))~~  
26 provide benefits to the worker as they become due ~~((there shall be paid~~  
27 ~~by the self-insurer upon order of the director))~~, but not after an  
28 order closing the claim has become final by operation of law, the  
29 department may order the self-insured employer to pay an additional  
30 amount equal to five hundred dollars or twenty-five percent of the  
31 amount then due, whichever is greater, which shall accrue for the  
32 benefit of the claimant and shall be paid to him with the benefits  
33 which may be assessed under this title. ~~((The director shall issue an~~  
34 ~~order determining whether there was an unreasonable delay or refusal to~~  
35 ~~pay benefits within thirty days upon the request of the claimant. Such~~  
36 ~~an order))~~

1       (2) The department may summarily deny a request for penalties if on  
2 its face it is deemed frivolous; in all other cases the department  
3 shall require the self-insured employer to file a written, substantive  
4 response. In such event, the self-insured employer shall have twenty  
5 working days to provide relevant documents to the department and  
6 respond to the request for penalties by the claimant. The department  
7 shall issue an order determining whether there was an unreasonable  
8 delay or refusal to pay benefits within sixty days after receipt of the  
9 documents requested from the self-insurer. Failure of the department  
10 to review the request and issue a timely order shall result in the  
11 issuance of an order denying the request for penalties. Any order  
12 under this section shall conform to the requirements of RCW 51.52.050.

13       (3) In an allowed claim, the worker may request the department to  
14 direct the self-insurer to issue an order concerning the provision of  
15 benefits. The department may make such inquiries as circumstances  
16 require. If the department requests information from a self-insurer by  
17 certified mail, the self-insurer shall submit all information in its  
18 possession concerning the claim within ten working days from the date  
19 of receipt of such certified notice. The department may in writing  
20 direct the self-insurer to issue an order within ninety days, or to  
21 provide good cause why an order cannot be issued. If the self-insurer  
22 fails to issue an order or to provide good cause within ninety days,  
23 the department may, within thirty days, issue an order determining  
24 whether the worker is entitled to the benefits and, if so, directing  
25 the self-insurer to provide the benefits.

26       **Sec. 50.** RCW 51.48.040 and 2003 c 53 s 282 are each amended to  
27 read as follows:

28       (1) The books, records and payrolls of the employer pertinent to  
29 the administration of this title shall always be open to inspection by  
30 the department or its traveling auditor, agent or assistant, for the  
31 purpose of ascertaining the correctness of the payroll, the persons  
32 employed, and such other information as may be necessary for the  
33 department and its management under this title.

34       (2) Refusal on the part of the employer to submit his or her books,  
35 records and payrolls for such inspection to the department, or any  
36 assistant presenting written authority from the director, shall subject

1 the offending employer to a penalty determined by the director but not  
2 to exceed two hundred fifty dollars for each offense and the individual  
3 who personally gives such refusal is guilty of a misdemeanor.

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

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

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

20 (6) If within two years of claim closure the department determines  
21 by audit that the self-insurer has made payment of benefits because of  
22 clerical error, mistake of identity, or innocent misrepresentation, the  
23 department may require the self-insurer to correct the benefits paid or  
24 payable. Any such order as a result of an audit shall not disturb the  
25 order closing the claim.

26 **Sec. 51.** RCW 51.48.040 and 2003 c 53 s 282 are each amended to  
27 read as follows:

28 (1) The books, records and payrolls of the employer pertinent to  
29 the administration of this title shall always be open to inspection by  
30 the department or its traveling auditor, agent or assistant, for the  
31 purpose of ascertaining the correctness of the payroll, the persons  
32 employed, and such other information as may be necessary for the  
33 department and its management under this title.

34 (2) Refusal on the part of the employer to submit his or her books,  
35 records and payrolls for such inspection to the department, or any  
36 assistant presenting written authority from the director, shall subject



1 the offending employer to a penalty determined by the director but not  
2 to exceed two hundred fifty dollars for each offense and the individual  
3 who personally gives such refusal is guilty of a misdemeanor.

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

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

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

20 **Sec. 52.** RCW 51.48.080 and 1985 c 347 s 7 are each amended to read  
21 as follows:

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

26 (2) Except as provided in subsection (3) of this section, the  
27 department may impose penalties not to exceed two thousand five hundred  
28 dollars against a self-insured employer when it determines by audit  
29 pursuant to RCW 51.48.040 that the self-insured employer has:

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

32 (b) Paid its injured workers monetary benefits in incorrect  
33 amounts;

34 (c) Failed to issue allowance or rejection orders on a timely  
35 basis;

36 (d) Failed to issue orders closing a claim within sixty days after

1 the attending physician has found an injured worker to be fixed and  
2 stable and a permanent disability level has been established by a  
3 preponderance of the medical evidence.

4 (3) The department may impose penalties not to exceed twenty-five  
5 thousand dollars against a self-insured employer when it determines by  
6 audit pursuant to RCW 51.48.040 that the self-insured employer has  
7 intentionally and repeatedly committed violations set forth in  
8 subsection (2)(a) through (d) of this section.

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

12 (5) The department shall adopt a schedule of penalties that will  
13 take into account the severity and number of violations.

14 (6) Orders imposing penalties for violations described in this  
15 section shall conform to the requirements of RCW 51.52.050.

16 **Sec. 53.** RCW 51.52.050 and 2004 c 243 s 8 are each amended to read  
17 as follows:

18 (1) Except as provided in RCW 51.32.095, 51.36.010, and 51.36.020,  
19 whenever the department or self-insurer has made any order, decision,  
20 or award, it shall promptly serve the worker, beneficiary, employer, or  
21 other person affected thereby, with a copy thereof by mail, which shall  
22 be addressed to such person at his or her last known address as shown  
23 by the records of the department or self-insurer, as the case may be.  
24 The copy, in case the same is a final order, decision, or award, shall  
25 bear on the same side of the same page on which is found the amount of  
26 the award, a statement, set in black faced type of at least ten point  
27 body or size, that such final order, decision, or award shall become  
28 final within sixty days from the date the order is communicated to the  
29 parties unless a written request for reconsideration is filed with the  
30 department of labor and industries, Olympia, and in cases involving a  
31 self-insurer with the self-insurer, or an appeal is filed with the  
32 board of industrial insurance appeals, Olympia(~~:- PROVIDED, That~~)).  
33 However, a department order or decision making demand, whether with or  
34 without penalty, for repayment of sums paid to a provider of medical,  
35 dental, vocational, or other health services rendered to an  
36 industrially injured worker, shall state that such order or decision  
37 shall become final within twenty days from the date the order or

1 decision is communicated to the parties unless a written request for  
2 reconsideration is filed with the department of labor and industries,  
3 Olympia, or an appeal is filed with the board of industrial insurance  
4 appeals, Olympia.

5 (2) Except as provided in RCW 51.32.095, 51.36.010, and 51.36.020,  
6 whenever the department or self-insurer has taken any action or made  
7 any decision relating to any phase of the administration of this title  
8 the worker, beneficiary, employer, or other person aggrieved thereby  
9 may request reconsideration (~~(of the department,)~~) or may appeal to the  
10 board. In an appeal before the board, the appellant shall have the  
11 burden of proceeding with the evidence to establish a prima facie case  
12 for the relief sought in such appeal(~~(: PROVIDED, That)~~). Provided,  
13 in an appeal from an order of the department that alleges willful  
14 misrepresentation, the department or self-insured employer shall  
15 initially introduce all evidence in its case in chief. Any such person  
16 aggrieved by the decision and order of the board may thereafter appeal  
17 to the superior court, as prescribed in this chapter.

18 (3) Except as provided in RCW 51.32.095, 51.36.010, and 51.36.020,  
19 if the department is requested to reconsider an order issued by a self-  
20 insurer, the department shall promptly request the file from the self-  
21 insurer. The department must issue an order affirming, modifying,  
22 reversing, or remanding the order within sixty days of receipt of the  
23 file from the self-insurer. However, for good cause, the department  
24 may once extend the time for issuing an order for an additional ninety  
25 days. If the department fails to issue an order within the time frames  
26 specified in this section, the self-insurer's order is deemed affirmed,  
27 subject to appeal. Upon receipt of the file in a request for  
28 reconsideration, the department shall notify all parties of the dates  
29 the department received the request and file, respectively, and the  
30 date upon which the self-insurer's order will be deemed affirmed if the  
31 department fails to take action. The notice shall also inform the  
32 parties that any appeal pursuant to RCW 51.52.060 must be filed within  
33 sixty days from the date the order is deemed affirmed. If such appeal  
34 is filed, the department may not direct submission of further evidence  
35 under RCW 51.52.060.

36 **Sec. 54.** RCW 51.52.060 and 1995 c 253 s 1 and 1995 c 199 s 7 are  
37 each reenacted and amended to read as follows:

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

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

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

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

1 event the department directs the submission of further evidence or the  
2 investigation of any further fact, as provided in this section, the  
3 department shall render a final order, decision, or award within ninety  
4 days from the date further submission of evidence or investigation of  
5 further fact is ordered which time period may be extended by the  
6 department for good cause stated in writing to all interested parties  
7 for an additional ninety days.

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

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

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

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

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

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

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

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

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

1       **Sec. 55.** RCW 51.52.070 and 1977 ex.s. c 350 s 77 are each amended  
2 to read as follows:

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

16       **Sec. 56.** RCW 51.52.080 and 1971 ex.s. c 289 s 69 are each amended  
17 to read as follows:

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

25       NEW SECTION. **Sec. 57.** A new section is added to chapter 51.14 RCW  
26 to read as follows:

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

30       **Sec. 58.** RCW 51.14.080 and 1986 c 57 s 7 are each amended to read  
31 as follows:

32       Certification of a self-insurer shall be withdrawn for the minimum  
33 period required under RCW 51.14.020 by the director upon one or more of  
34 the following grounds:

1 (1) The employer no longer meets the requirements of a self-  
2 insurer; ((~~or~~))

3 (2) The self-insurer's deposit is insufficient; ((~~or~~))

4 (3) The self-insurer intentionally or repeatedly induces employees  
5 to fail to report injuries, induces claimants to treat injuries in the  
6 course of employment as off-the-job injuries, persuades claimants to  
7 accept less than the compensation due, or unreasonably makes it  
8 necessary for claimants to resort to proceedings against the employer  
9 to obtain compensation; ((~~or~~))

10 (4) The self-insurer habitually fails to comply with rules and  
11 regulations of the director regarding reports or other requirements  
12 necessary to carry out the purposes of this title; ((~~or~~))

13 (5) The self-insurer habitually engages in a practice of  
14 arbitrarily or unreasonably refusing employment to applicants for  
15 employment or discharging employees because of nondisabling bodily  
16 conditions; ((~~or~~))

17 (6) The self-insurer fails to pay an insolvency assessment under  
18 the procedures established pursuant to RCW 51.14.077; or

19 (7) The self-insurer has been assessed penalties for the following:

20 (a) A level three violation under section 61 of this act;

21 (b) Two or more level two violations under section 61 of this act  
22 within one year;

23 (c) Three or more level three violations under section 61 of this  
24 act within one year; or

25 (d) Violations under this title that resulted in penalties assessed  
26 against the self-insurer of more than twenty-five thousand dollars  
27 within one year.

28 **Sec. 59.** RCW 51.14.140 and 1993 c 122 s 4 are each amended to read  
29 as follows:

30 (1) Failure of a self-insurer to comply with RCW 51.14.120 ((and)),  
31 51.14.130, 51.32.055, or 51.32.195 shall subject the self-insurer to a  
32 penalty under RCW 51.48.080, which shall accrue for the benefit of the  
33 employee. Each day of failure to comply with RCW 51.14.120, 51.32.055,  
34 or 51.32.195 is a separate violation.

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

1       **Sec. 60.** RCW 51.28.070 and 1990 c 209 s 2 are each amended to read  
2 as follows:

3       (1)(a) Except as provided in this subsection, information contained  
4 in the claim files and records of injured workers, under the provisions  
5 of this title, shall be deemed confidential and shall not be open to  
6 public inspection (other than to public employees in the performance of  
7 their official duties)~~((, but))~~.

8       (b) Representatives of a claimant, be it an individual or an  
9 organization, may review a claim file or receive specific information  
10 therefrom upon the presentation of the signed authorization of the  
11 claimant. A claimant may review his or her claim file if the director  
12 determines, pursuant to criteria adopted by rule, that the review is in  
13 the claimant's interest.

14       (c) Employers or their duly authorized representatives may review  
15 any files of their own injured workers in connection with any pending  
16 claims.

17       (d) Physicians treating or examining workers claiming benefits  
18 under this title, or physicians giving medical advice to the department  
19 regarding any claim may, at the discretion of the department, inspect  
20 the claim files and records of injured workers~~((, and other persons may~~  
21 ~~make such inspection, at the department's discretion, when such))~~.

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

26       (f) The ombudsperson appointed under section 66 of this act may  
27 inspect the claim files and records of an injured worker when rendering  
28 assistance to the injured worker pursuant to section 66 of this act.

29       (2) It is a violation of this section if a self-insured employer  
30 obtains or discloses information unrelated to the claim of its injured  
31 worker or, in violation of department rules, discloses information in  
32 a claim file or record of its injured worker. Such violation is  
33 subject to a penalty as provided in section 61 of this act.

34       NEW SECTION. Sec. 61. A new section is added to chapter 51.48 RCW  
35 to read as follows:

36       (1) In addition to any other penalties imposed under this title, a



1 self-insurer is subject to the following penalties for each day that a  
2 violation occurs:

3 (a) For a level one violation, a penalty of five hundred dollars;  
4 (b) For a level two violation, a penalty of one thousand dollars;

5 or

6 (c) For a level three violation, a penalty of five thousand  
7 dollars.

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

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

14 (3) For the purposes of this section:

15 (a) "Level one violation" means:

16 (i) Failing to comply with RCW 51.14.120, 51.14.130, 51.32.055, or  
17 51.32.195;

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

21 (iii) Obtaining or disclosing claim files or records in violation  
22 of RCW 51.28.070.

23 (b) "Level two violation" means:

24 (i) Unreasonably or negligently failing to comply with RCW  
25 51.14.120, 51.14.130, 51.32.055, or 51.32.195;

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

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

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

34 (c) "Level three violation" means:

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

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

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

6 (d) "Willful" means a conscious or deliberate false statement,  
7 misrepresentation, omission, or concealment of a material fact with the  
8 specific intent of preventing or reducing the award of benefits under  
9 this title.

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

13 **Sec. 62.** RCW 51.48.017 and 1985 c 347 s 3 are each amended to read  
14 as follows:

15 (1) If a self-insurer unreasonably delays or refuses to pay  
16 benefits as they become due there shall be paid by the self-insurer  
17 upon order of the director an additional amount equal to five hundred  
18 dollars for each day of delay or refusal or twenty-five percent of the  
19 amount then due, whichever is greater, which shall accrue for the  
20 benefit of the claimant and shall be paid to him or her with the  
21 benefits which may be assessed under this title.

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

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

28 **Sec. 63.** RCW 51.48.025 and 1985 c 347 s 8 are each amended to read  
29 as follows:

30 (1) No employer may discharge or in any manner discriminate against  
31 any employee because such employee: (a) Has filed or communicated to  
32 the employer an intent to file a claim for compensation; (b) makes a  
33 complaint against a self-insured employer that could result in  
34 subjecting the employer to penalties under this title; or (c) exercises  
35 any rights provided under this title. However, nothing in this section  
36 prevents an employer from taking any action against a worker for other

1 reasons including, but not limited to, the worker's failure to observe  
2 health or safety standards adopted by the employer, or the frequency or  
3 nature of the worker's job-related accidents.

4 (2) Any employee who believes that he or she has been discharged or  
5 otherwise discriminated against by an employer in violation of this  
6 section may file a complaint with the director alleging discrimination  
7 within ninety days of the date of the alleged violation. Upon receipt  
8 of such complaint, the director shall cause an investigation to be made  
9 as the director deems appropriate. Within ninety days of the receipt  
10 of a complaint filed under this section, the director shall notify the  
11 complainant of his or her determination. If upon such investigation,  
12 it is determined that this section has been violated, the director  
13 shall bring an action in the superior court of the county in which the  
14 violation is alleged to have occurred.

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

18 (4) In any action brought under this section, the superior court  
19 shall have jurisdiction, for cause shown, to restrain violations of  
20 subsection (1) of this section and to order all appropriate relief  
21 including rehiring or reinstatement of the employee with back pay.

22 **Sec. 64.** RCW 51.48.080 and 1985 c 347 s 7 are each amended to read  
23 as follows:

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

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

35 NEW SECTION. **Sec. 65.** A new section is added to chapter 51.48 RCW  
36 to read as follows:

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

4 NEW SECTION. **Sec. 66.** A new section is added to chapter 51.48 RCW  
5 to read as follows:

6 As part of their administrative assessments, self-insured employers  
7 shall be assessed to cover their proportionate cost of an ombudsperson,  
8 contracted by the department for that purpose. The contracted  
9 ombudsperson shall act as an advocate on behalf of the injured worker.

10 NEW SECTION. **Sec. 67.** RCW 51.32.190 (Self-insurers--Notice of  
11 denial of claim, reasons--Procedure--Powers and duties of director) and  
12 1996 c 58 s 2, 1982 1st ex.s. c 20 s 3, 1977 ex.s. c 350 s 54, 1972  
13 ex.s. c 43 s 25, & 1971 ex.s. c 289 s 47 are each repealed.

14 NEW SECTION. **Sec. 68.** This act applies to all pending claims and  
15 claims for which an application to reopen pursuant to RCW 51.32.160 is  
16 filed or pending on or after January 1, 2007, regardless of the date of  
17 injury or the date a claim is presented.

18 NEW SECTION. **Sec. 69.** This act takes effect January 1, 2007,  
19 except for the following:

20 (1) Sections 3, 19, 21, 23, 26, 32, 36, 43, and 47 of this act take  
21 effect June 30, 2007.

22 (2) Section 51 of this act takes effect December 31, 2011.

23 NEW SECTION. **Sec. 70.** (1) Sections 2, 18, 20, 22, 25, 31, 35, 42,  
24 and 46 of this act expire June 30, 2007.

25 (2) Section 50 of this act expires December 31, 2011.

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