

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1725

62nd Legislature
2011 Regular Session

Passed by the House April 21, 2011
Yeas 96 Nays 1

Speaker of the House of Representatives

Passed by the Senate April 21, 2011
Yeas 47 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1725** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1725

AS AMENDED BY THE SENATE

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

By House Labor & Workforce Development (originally sponsored by Representatives Sells, Reykdal, Ormsby, Kenney, and Upthegrove; by request of Department of Labor & Industries)

READ FIRST TIME 02/17/11.

1 AN ACT Relating to administrative efficiencies for the workers'
2 compensation program; amending RCW 51.04.030, 51.04.082, 51.24.060,
3 51.32.240, 51.48.120, 51.48.150, and 51.52.050; adding a new section to
4 chapter 51.18 RCW; and adding a new section to chapter 51.36 RCW.

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

6 **Sec. 1.** RCW 51.04.030 and 2004 c 65 s 1 are each amended to read
7 as follows:

8 (1) The director shall supervise the providing of prompt and
9 efficient care and treatment, including care provided by physician
10 assistants governed by the provisions of chapters 18.57A and 18.71A
11 RCW, acting under a supervising physician, including chiropractic care,
12 and including care provided by licensed advanced registered nurse
13 practitioners, to workers injured during the course of their employment
14 at the least cost consistent with promptness and efficiency, without
15 discrimination or favoritism, and with as great uniformity as the
16 various and diverse surrounding circumstances and locations of
17 industries will permit and to that end shall, from time to time,
18 establish and adopt and supervise the administration of printed forms,
19 rules, regulations, and practices for the furnishing of such care and

1 treatment: PROVIDED, That the medical coverage decisions of the
2 department do not constitute a "rule" as used in RCW 34.05.010(16), nor
3 are such decisions subject to the rule-making provisions of chapter
4 34.05 RCW except that criteria for establishing medical coverage
5 decisions shall be adopted by rule after consultation with the workers'
6 compensation advisory committee established in RCW 51.04.110: PROVIDED
7 FURTHER, That the department may recommend to an injured worker
8 particular health care services and providers where specialized
9 treatment is indicated or where cost effective payment levels or rates
10 are obtained by the department: AND PROVIDED FURTHER, That the
11 department may enter into contracts for goods and services including,
12 but not limited to, durable medical equipment so long as statewide
13 access to quality service is maintained for injured workers.

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

35 (3) The director or self-insurer, as the case may be, shall make a
36 record of the commencement of every disability and the termination
37 thereof and, when bills are rendered for the care and treatment of
38 injured workers, shall approve and pay those which conform to the

1 adopted rules, regulations, established fee schedules, and practices of
2 the director and may reject any bill or item thereof incurred in
3 violation of the principles laid down in this section or the rules,
4 regulations, or the established fee schedules and rules and regulations
5 adopted under it.

6 **Sec. 2.** RCW 51.04.082 and 1986 c 9 s 2 are each amended to read as
7 follows:

8 Any notice or order required by this title to be mailed to any
9 employer may be served in the manner prescribed by law for personal
10 service of summons and complaint in the commencement of actions in the
11 superior courts of the state, but if the notice or order is mailed, it
12 shall be addressed to the address of the employer as shown by the
13 records of the department, or, if no such address is shown, to such
14 address as the department is able to ascertain by reasonable effort.
15 If requested by the employer, any notice or order may be sent by secure
16 electronic means except orders communicating the closure of a claim.
17 Correspondence and notices sent electronically are considered received
18 on the date sent by the department. Failure of the employer to receive
19 such notice or order whether served or mailed shall not release the
20 employer from any tax or any increases or penalties thereon.

21 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.18 RCW
22 to read as follows:

23 Payment by an employer for direct primary care services as defined
24 in RCW 48.150.010 when used for medical services on an allowed
25 industrial injury or occupational disease claim does not disqualify:
26 (1) The employer from participating in a retrospective rating plan; (2)
27 any related group sponsor from promoting a retrospective rating plan;
28 or (3) any related plan administrator from administering a
29 retrospective rating plan, provided the employer or group sponsor or
30 plan administrator provides any medical cost or payment information
31 that may be required by the department. Prior to the first
32 retrospective rating adjustment for the plan year beginning January 1,
33 2012, the department shall determine the information needed and any
34 changes to the retrospective rating premium and claim cost calculations
35 to maintain appropriate and equitable retrospective rating refunds when

1 employers pay for direct primary care services. These changes shall
2 apply beginning with the January 1, 2012, plan year.

3 The department may adopt rules to implement this section.

4 **Sec. 4.** RCW 51.24.060 and 2001 c 146 s 9 are each amended to read
5 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (6) The distribution of any recovery made by award or settlement of
36 the third party action shall be confirmed by department order, served
37 by (~~registered or certified mail~~) a method for which receipt can be
38 confirmed or tracked, and shall be subject to chapter 51.52 RCW. In

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

25 (7) The director, or the director's designee, may issue to any
26 person, firm, corporation, municipal corporation, political subdivision
27 of the state, public corporation, or agency of the state, a notice and
28 order to withhold and deliver property of any kind if he or she has
29 reason to believe that there is in the possession of such person, firm,
30 corporation, municipal corporation, political subdivision of the state,
31 public corporation, or agency of the state, property which is due,
32 owing, or belonging to any worker or beneficiary upon whom a warrant
33 has been served by the department for payments due to the state fund.
34 The notice and order to withhold and deliver shall be served by the
35 sheriff of the county or by the sheriff's deputy; by ~~((certified mail,~~
36 ~~return receipt requested))~~ a method for which receipt can be confirmed
37 or tracked; or by any authorized representatives of the director. Any
38 person, firm, corporation, municipal corporation, political subdivision

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

19 NEW SECTION. **Sec. 5.** A new section is added to chapter 51.36 RCW
20 to read as follows:

21 The department shall report to the appropriate committees of the
22 legislature by December 1, 2011, on statutory changes needed to ensure
23 an injured worker may receive care from a health care provider who
24 furnishes primary care services through a direct agreement in
25 compliance with chapter 48.150 RCW and that the injured worker is not
26 paying directly for medical services related to their industrial injury
27 or occupational disease. The report shall provide a timeline for rule
28 development with a goal to have necessary changes in place by July 1,
29 2013, and include the data required from direct care providers
30 necessary to establish premium rates, experience modification factors,
31 and retrospective rating adjustments; medical cost or payment
32 information that may be required from retrospective rating
33 participants; any requirements specific to direct primary care
34 providers in order for them to participate in the statewide medical
35 provider network and to ensure the department has information to
36 efficiently manage worker claims; and any other issues or barriers to

1 participation of direct primary care providers in the workers'
2 compensation system.

3 **Sec. 6.** RCW 51.32.240 and 2008 c 280 s 2 are each amended to read
4 as follows:

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

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

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

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

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

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

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

21 (4) Whenever any payment of benefits under this title has been made
22 pursuant to an adjudication by the department or by order of the board
23 or any court and timely appeal therefrom has been made where the final
24 decision is that any such payment was made pursuant to an erroneous
25 adjudication, the recipient thereof shall repay it and recoupment may
26 be made from any future payments due to the recipient on any claim
27 whether state fund or self-insured.

28 (a) The director, pursuant to rules adopted in accordance with the
29 procedures provided in the administrative procedure act, chapter 34.05
30 RCW, may exercise discretion to waive, in whole or in part, the amount
31 of any such payments where the recovery would be against equity and
32 good conscience. However, if the director waives in whole or in part
33 any such payments due a self-insurer, the self-insurer shall be
34 reimbursed the amount waived from the self-insured employer overpayment
35 reimbursement fund.

36 (b) The department shall collect information regarding self-insured
37 claim overpayments resulting from final decisions of the board and the
38 courts, and recoup such overpayments on behalf of the self-insurer from

1 any open, new, or reopened state fund or self-insured claims. The
2 department shall forward the amounts collected to the self-insurer to
3 whom the payment is owed. The department may provide information as
4 needed to any self-insurers from whom payments may be collected on
5 behalf of the department or another self-insurer. Notwithstanding RCW
6 51.32.040, any self-insurer requested by the department to forward
7 payments to the department pursuant to this subsection shall pay the
8 department directly. The department shall credit the amounts recovered
9 to the appropriate fund, or forward amounts collected to the
10 appropriate self-insurer, as the case may be.

11 (c) If a self-insurer is not fully reimbursed within twenty-four
12 months of the first attempt at recovery through the collection process
13 pursuant to this subsection and by means of processes pursuant to
14 subsection (6) of this section, the self-insurer shall be reimbursed
15 for the remainder of the amount due from the self-insured employer
16 overpayment reimbursement fund.

17 (d) For purposes of this subsection, "recipient" does not include
18 health service providers whose treatment or services were authorized by
19 the department or self-insurer.

20 (e) The department or self-insurer shall first attempt recovery of
21 overpayments for health services from any entity that provided health
22 insurance to the worker to the extent that the health insurance entity
23 would have provided health insurance benefits but for workers'
24 compensation coverage.

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

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

1 (i) Willful false statement; or
2 (ii) Willful misrepresentation, omission, or concealment of any
3 material fact.
4 (c) For purposes of this subsection (5), "willful" means a
5 conscious or deliberate false statement, misrepresentation, omission,
6 or concealment of a material fact with the specific intent of
7 obtaining, continuing, or increasing benefits under this title.
8 (d) For purposes of this subsection (5), failure to disclose a
9 work-type activity must be willful in order for a misrepresentation to
10 have occurred.
11 (e) For purposes of this subsection (5), a material fact is one
12 which would result in additional, increased, or continued benefits,
13 including but not limited to facts about physical restrictions, or
14 work-type activities which either result in wages or income or would be
15 reasonably expected to do so. Wages or income include the receipt of
16 any goods or services. For a work-type activity to be reasonably
17 expected to result in wages or income, a pattern of repeated activity
18 must exist. For those activities that would reasonably be expected to
19 result in wages or produce income, but for which actual wage or income
20 information cannot be reasonably determined, the department shall
21 impute wages pursuant to RCW 51.08.178(4).
22 (6) The worker, beneficiary, or other person affected thereby shall
23 have the right to contest an order assessing an overpayment pursuant to
24 this section in the same manner and to the same extent as provided
25 under RCW 51.52.050 and 51.52.060. In the event such an order becomes
26 final under chapter 51.52 RCW and notwithstanding the provisions of
27 subsections (1) through (5) of this section, the director, director's
28 designee, or self-insurer may file with the clerk in any county within
29 the state a warrant in the amount of the sum representing the unpaid
30 overpayment and/or penalty plus interest accruing from the date the
31 order became final. The clerk of the county in which the warrant is
32 filed shall immediately designate a superior court cause number for
33 such warrant and the clerk shall cause to be entered in the judgment
34 docket under the superior court cause number assigned to the warrant,
35 the name of the worker, beneficiary, or other person mentioned in the
36 warrant, the amount of the unpaid overpayment and/or penalty plus
37 interest accrued, and the date the warrant was filed. The amount of
38 the warrant as docketed shall become a lien upon the title to and

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

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

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

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

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

18 **Sec. 7.** RCW 51.48.120 and 1995 c 160 s 5 are each amended to read
19 as follows:

20 If any employer should default in any payment due to the state fund
21 the director or the director's designee may issue a notice of
22 assessment certifying the amount due, which notice shall be served upon
23 the employer by mailing such notice to the employer by (~~certified~~
24 ~~mail~~) a method for which receipt can be confirmed or tracked to the
25 employer's last known address or served in the manner prescribed for
26 the service of a summons in a civil action. Such notice shall contain
27 the information that an appeal must be filed with the board of
28 industrial insurance appeals and the director by mail or personally
29 within thirty days of the date of service of the notice of assessment
30 in order to appeal the assessment unless a written request for
31 reconsideration is filed with the department of labor and industries.

32 **Sec. 8.** RCW 51.48.150 and 1995 c 160 s 6 are each amended to read
33 as follows:

34 The director or the director's designee is hereby authorized to
35 issue to any person, firm, corporation, municipal corporation,
36 political subdivision of the state, a public corporation, or any agency

1 of the state, a notice and order to withhold and deliver property of
2 any kind whatsoever when he or she has reason to believe that there is
3 in the possession of such person, firm, corporation, municipal
4 corporation, political subdivision of the state, public corporation, or
5 any agency of the state, property which is or shall become due, owing,
6 or belonging to any employer upon whom a notice of assessment has been
7 served by the department for payments due to the state fund. The
8 effect of a notice and order to withhold and deliver shall be
9 continuous from the date such notice and order to withhold and deliver
10 is first made until the liability out of which such notice and order to
11 withhold and deliver arose is satisfied or becomes unenforceable
12 because of lapse of time. The department shall release the notice and
13 order to withhold and deliver when the liability out of which the
14 notice and order to withhold and deliver arose is satisfied or becomes
15 unenforceable by reason of lapse of time and shall notify the person
16 against whom the notice and order to withhold and deliver was made that
17 such notice and order to withhold and deliver has been released.

18 The notice and order to withhold and deliver shall be served by the
19 sheriff of the county or by the sheriff's deputy, by (~~certified mail,~~
20 ~~return receipt requested~~) a method for which receipt can be confirmed
21 or tracked, or by any duly authorized representatives of the director.
22 Any person, firm, corporation, municipal corporation, political
23 subdivision of the state, public corporation or any agency of the state
24 upon whom service has been made is hereby required to answer the notice
25 within twenty days exclusive of the day of service, under oath and in
26 writing, and shall make true answers to the matters inquired of in the
27 notice and order to withhold and deliver. In the event there is in the
28 possession of the party named and served with a notice and order to
29 withhold and deliver, any property which may be subject to the claim of
30 the department, such property shall be delivered forthwith to the
31 director or the director's duly authorized representative upon service
32 of the notice to withhold and deliver which will be held in trust by
33 the director for application on the employer's indebtedness to the
34 department, or for return without interest, in accordance with a final
35 determination of a petition for review, or in the alternative such
36 party shall furnish a good and sufficient surety bond satisfactory to
37 the director conditioned upon final determination of liability. Should
38 any party served and named in the notice to withhold and deliver fail

1 to make answer to such notice and order to withhold and deliver, within
2 the time prescribed herein, it shall be lawful for the court, after the
3 time to answer such order has expired, to render judgment by default
4 against the party named in the notice to withhold and deliver for the
5 full amount claimed by the director in the notice to withhold and
6 deliver together with costs. In the event that a notice to withhold
7 and deliver is served upon an employer and the property found to be
8 subject thereto is wages, then the employer shall be entitled to assert
9 in the answer to all exemptions provided for by chapter 6.27 RCW to
10 which the wage earner may be entitled.

11 **Sec. 9.** RCW 51.52.050 and 2008 c 280 s 1 are each amended to read
12 as follows:

13 (1) Whenever the department has made any order, decision, or award,
14 it shall promptly serve the worker, beneficiary, employer, or other
15 person affected thereby, with a copy thereof by mail, (~~which shall be~~
16 ~~addressed to such person at his or her last known address as shown by~~
17 ~~the records of the department~~) or if the worker, beneficiary,
18 employer, or other person affected thereby chooses, the department may
19 send correspondence and other legal notices by secure electronic means
20 except for orders communicating the closure of a claim. Persons who
21 choose to receive correspondence and other legal notices electronically
22 shall be provided information to assist them in ensuring all electronic
23 documents and communications are received. Correspondence and notices
24 must be addressed to such a person at his or her last known postal or
25 electronic address as shown by the records of the department.
26 Correspondence and notices sent electronically are considered received
27 on the date sent by the department. The copy, in case the same is a
28 final order, decision, or award, shall bear on the same side of the
29 same page on which is found the amount of the award, a statement, set
30 in black faced type of at least ten point body or size, that such final
31 order, decision, or award shall become final within sixty days from the
32 date the order is communicated to the parties unless a written request
33 for reconsideration is filed with the department of labor and
34 industries, Olympia, or an appeal is filed with the board of industrial
35 insurance appeals, Olympia. However, a department order or decision
36 making demand, whether with or without penalty, for repayment of sums
37 paid to a provider of medical, dental, vocational, or other health

1 services rendered to an industrially injured worker, shall state that
2 such order or decision shall become final within twenty days from the
3 date the order or decision is communicated to the parties unless a
4 written request for reconsideration is filed with the department of
5 labor and industries, Olympia, or an appeal is filed with the board of
6 industrial insurance appeals, Olympia.

7 (2)(a) Whenever the department has taken any action or made any
8 decision relating to any phase of the administration of this title the
9 worker, beneficiary, employer, or other person aggrieved thereby may
10 request reconsideration of the department, or may appeal to the board.
11 In an appeal before the board, the appellant shall have the burden of
12 proceeding with the evidence to establish a prima facie case for the
13 relief sought in such appeal.

14 (b) An order by the department awarding benefits shall become
15 effective and benefits due on the date issued. Subject to (b)(i) and
16 (ii) of this subsection, if the department order is appealed the order
17 shall not be stayed pending a final decision on the merits unless
18 ordered by the board. Upon issuance of the order granting the appeal,
19 the board will provide the worker with notice concerning the potential
20 of an overpayment of benefits paid pending the outcome of the appeal
21 and the requirements for interest on unpaid benefits pursuant to RCW
22 51.52.135. A worker may request that benefits cease pending appeal at
23 any time following the employer's motion for stay or the board's order
24 granting appeal. The request must be submitted in writing to the
25 employer, the board, and the department. Any employer may move for a
26 stay of the order on appeal, in whole or in part. The motion must be
27 filed within fifteen days of the order granting appeal. The board
28 shall conduct an expedited review of the claim file provided by the
29 department as it existed on the date of the department order. The
30 board shall issue a final decision within twenty-five days of the
31 filing of the motion for stay or the order granting appeal, whichever
32 is later. The board's final decision may be appealed to superior court
33 in accordance with RCW 51.52.110. The board shall grant a motion to
34 stay if the moving party demonstrates that it is more likely than not
35 to prevail on the facts as they existed at the time of the order on
36 appeal. The board shall not consider the likelihood of recoupment of
37 benefits as a basis to grant or deny a motion to stay. If a

1 self-insured employer prevails on the merits, any benefits paid may be
2 recouped pursuant to RCW 51.32.240.

3 (i) If upon reconsideration requested by a worker or medical
4 provider, the department has ordered an increase in a permanent partial
5 disability award from the amount reflected in an earlier order, the
6 award reflected in the earlier order shall not be stayed pending a
7 final decision on the merits. However, the increase is stayed without
8 further action by the board pending a final decision on the merits.

9 (ii) If any party appeals an order establishing a worker's wages or
10 the compensation rate at which a worker will be paid temporary or
11 permanent total disability or loss of earning power benefits, the
12 worker shall receive payment pending a final decision on the merits
13 based on the following:

14 (A) When the employer is self-insured, the wage calculation or
15 compensation rate the employer most recently submitted to the
16 department; or

17 (B) When the employer is insured through the state fund, the
18 highest wage amount or compensation rate uncontested by the parties.

19 Payment of benefits or consideration of wages at a rate that is
20 higher than that specified in (b)(ii)(A) or (B) of this subsection is
21 stayed without further action by the board pending a final decision on
22 the merits.

23 (c) In an appeal from an order of the department that alleges
24 willful misrepresentation, the department or self-insured employer
25 shall initially introduce all evidence in its case in chief. Any such
26 person aggrieved by the decision and order of the board may thereafter
27 appeal to the superior court, as prescribed in this chapter.

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