
SUBSTITUTE SENATE BILL 5582

State of Washington

62nd Legislature

2011 Regular Session

By Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Conway and Kohl-Welles; by request of Department of Labor & Industries)

READ FIRST TIME 02/21/11.

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; and adding a new
4 section to chapter 51.14 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 51.14 RCW
22 to read as follows:

23 (1) Except for claims involving only medical treatment, when a
24 self-insurer has determined to allow an industrial insurance claim, the
25 self-insurer must issue an order to the injured worker, the last known
26 attending medical provider, and the department within sixty days from
27 the date of notice of a claim. If an allowance order is not issued
28 within the required time, the claim will be deemed allowed. Orders
29 issued by self-insurers under this subsection shall only allow the
30 claim and shall not address any other issues such as what medical
31 conditions are or are not allowed under the claim.

32 (2) When a self-insurer determines that a claim should be denied,
33 the self-insurer must forward the claim to the department with a
34 request for denial within sixty days from the date of notice of a
35 claim. If the denial request is not received within the required time,
36 the claim will be deemed allowed.

1 (3) When a self-insurer has determined to reopen an industrial
2 insurance claim, the self-insurer must issue an order to the injured
3 worker, the medical provider named on the worker's reopening
4 application, and the department within ninety days of receipt of the
5 worker's request by the self-insurer. If a reopening order is not
6 issued within the required time, the application will be deemed
7 granted. This authority is limited to those reopening applications
8 made within seven years from the date the first closing order became
9 final.

10 (4) When a self-insurer determines that an application for
11 reopening should be denied, the self-insurer must forward the claim to
12 the department with a request for denial within seventy days from the
13 date the reopening application is received. The department requires a
14 minimum of twenty days to review the request and issue a further order.
15 If the denial order is not issued within the required time, the
16 reopening application will be deemed granted in accordance with RCW
17 51.32.160.

18 (5) The self-insurer may extend the time for issuing the orders in
19 this section by an additional sixty days for good cause by providing
20 written notice that includes the reason or reasons for good cause to
21 both the injured worker and the department prior to the expiration of
22 the initial time limit.

23 (6) The department will, for each order listed in subsections (1)
24 through (5) of this section, develop the form and content of the order
25 to be used by self-insurers. All orders issued by self-insurers must
26 be substantially similar to the order developed by the department and
27 must include in a statement, set in black faced type of at least ten
28 point body or size, that such final order, decision, or award shall
29 become final within sixty days from the date the order is communicated
30 to the parties unless a written request for reconsideration is filed
31 with the department of labor and industries, Olympia, or an appeal is
32 filed with the board of industrial insurance appeals, Olympia. Self-
33 insurers who fail to use substantially similar orders will be subject
34 to penalty. The department may develop additional information that
35 must accompany orders including explanatory letters.

36 (7) Protests to orders of self-insurers shall be reviewed by the
37 department. The department will issue a further determinative order as
38 provided in RCW 51.52.050. If no protest is timely filed, any order

1 issued by the self-insurer that is substantially similar to the order
2 developed by the department will become final and will have the same
3 force and effect as a department order that has become final under RCW
4 51.52.050.

5 (8) The department may intervene in any open claim to resolve a
6 dispute at the request of an interested party, or may initiate an
7 inquiry independently. In these cases, the department may issue orders
8 in accordance with RCW 51.52.050.

9 (9) If the self-insurer does not issue timely orders as required by
10 this section, they will be subject to penalties payable to the worker.
11 The department is authorized to establish in rule the penalty schedule
12 for violations of this section.

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

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

18 (a) The costs and reasonable attorneys' fees shall be paid
19 proportionately by the injured worker or beneficiary and the department
20 and/or self-insurer: PROVIDED, That the department and/or self-insurer
21 may require court approval of costs and attorneys' fees or may petition
22 a court for determination of the reasonableness of costs and attorneys'
23 fees;

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

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

31 (i) The department and/or self-insurer shall bear its proportionate
32 share of the costs and reasonable attorneys' fees incurred by the
33 worker or beneficiary to the extent of the benefits paid under this
34 title: PROVIDED, That the department's and/or self-insurer's
35 proportionate share shall not exceed one hundred percent of the costs
36 and reasonable attorneys' fees;

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

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

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

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

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

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

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

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

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

37 (4) In an action under this section, the self-insurer may act on

1 behalf and for the benefit of the department to the extent of any
2 compensation and benefits paid or payable from state funds.

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

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

36 (7) The director, or the director's designee, may issue to any
37 person, firm, corporation, municipal corporation, political subdivision
38 of the state, public corporation, or agency of the state, a notice and

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

30 **Sec. 5.** RCW 51.32.240 and 2008 c 280 s 2 are each amended to read
31 as follows:

32 (1)(a) Whenever any payment of benefits under this title is made
33 because of clerical error, mistake of identity, innocent
34 misrepresentation by or on behalf of the recipient thereof mistakenly
35 acted upon, or any other circumstance of a similar nature, all not
36 induced by willful misrepresentation, the recipient thereof shall repay
37 it and recoupment may be made from any future payments due to the

1 recipient on any claim with the state fund or self-insurer, as the case
2 may be. The department or self-insurer, as the case may be, must make
3 claim for such repayment or recoupment within one year of the making of
4 any such payment or it will be deemed any claim therefor has been
5 waived.

6 (b) Except as provided in subsections (3), (4), and (5) of this
7 section, the department may only assess an overpayment of benefits
8 because of adjudicator error when the order upon which the overpayment
9 is based is not yet final as provided in RCW 51.52.050 and 51.52.060.
10 "Adjudicator error" includes the failure to consider information in the
11 claim file, failure to secure adequate information, or an error in
12 judgment.

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

18 (2) Whenever the department or self-insurer fails to pay benefits
19 because of clerical error, mistake of identity, or innocent
20 misrepresentation, all not induced by recipient willful
21 misrepresentation, the recipient may request an adjustment of benefits
22 to be paid from the state fund or by the self-insurer, as the case may
23 be, subject to the following:

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

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

35 (3) Whenever the department issues an order rejecting a claim for
36 benefits paid pursuant to RCW 51.32.190 or 51.32.210, after payment for
37 temporary disability benefits has been paid by a self-insurer pursuant
38 to RCW 51.32.190(3) or by the department pursuant to RCW 51.32.210, the

1 recipient thereof shall repay such benefits and recoupment may be made
2 from any future payments due to the recipient on any claim with the
3 state fund or self-insurer, as the case may be. The director, under
4 rules adopted in accordance with the procedures provided in the
5 administrative procedure act, chapter 34.05 RCW, may exercise
6 discretion to waive, in whole or in part, the amount of any such
7 payments where the recovery would be against equity and good
8 conscience.

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

16 (a) The director, pursuant to rules adopted in accordance with the
17 procedures provided in the administrative procedure act, chapter 34.05
18 RCW, may exercise discretion to waive, in whole or in part, the amount
19 of any such payments where the recovery would be against equity and
20 good conscience. However, if the director waives in whole or in part
21 any such payments due a self-insurer, the self-insurer shall be
22 reimbursed the amount waived from the self-insured employer overpayment
23 reimbursement fund.

24 (b) The department shall collect information regarding self-insured
25 claim overpayments resulting from final decisions of the board and the
26 courts, and recoup such overpayments on behalf of the self-insurer from
27 any open, new, or reopened state fund or self-insured claims. The
28 department shall forward the amounts collected to the self-insurer to
29 whom the payment is owed. The department may provide information as
30 needed to any self-insurers from whom payments may be collected on
31 behalf of the department or another self-insurer. Notwithstanding RCW
32 51.32.040, any self-insurer requested by the department to forward
33 payments to the department pursuant to this subsection shall pay the
34 department directly. The department shall credit the amounts recovered
35 to the appropriate fund, or forward amounts collected to the
36 appropriate self-insurer, as the case may be.

37 (c) If a self-insurer is not fully reimbursed within twenty-four
38 months of the first attempt at recovery through the collection process

1 pursuant to this subsection and by means of processes pursuant to
2 subsection (6) of this section, the self-insurer shall be reimbursed
3 for the remainder of the amount due from the self-insured employer
4 overpayment reimbursement fund.

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

8 (e) The department or self-insurer shall first attempt recovery of
9 overpayments for health services from any entity that provided health
10 insurance to the worker to the extent that the health insurance entity
11 would have provided health insurance benefits but for workers'
12 compensation coverage.

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

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

27 (i) Willful false statement; or

28 (ii) Willful misrepresentation, omission, or concealment of any
29 material fact.

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

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

37 (e) For purposes of this subsection (5), a material fact is one
38 which would result in additional, increased, or continued benefits,

1 including but not limited to facts about physical restrictions, or
2 work-type activities which either result in wages or income or would be
3 reasonably expected to do so. Wages or income include the receipt of
4 any goods or services. For a work-type activity to be reasonably
5 expected to result in wages or income, a pattern of repeated activity
6 must exist. For those activities that would reasonably be expected to
7 result in wages or produce income, but for which actual wage or income
8 information cannot be reasonably determined, the department shall
9 impute wages pursuant to RCW 51.08.178(4).

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

1 warrant. A copy of such warrant shall be mailed to the worker,
2 beneficiary, or other person within three days of filing with the
3 clerk.

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

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

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

8 **Sec. 6.** RCW 51.48.120 and 1995 c 160 s 5 are each amended to read
9 as follows:

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

22 **Sec. 7.** RCW 51.48.150 and 1995 c 160 s 6 are each amended to read
23 as follows:

24 The director or the director's designee is hereby authorized to
25 issue to any person, firm, corporation, municipal corporation,
26 political subdivision of the state, a public corporation, or any agency
27 of the state, a notice and order to withhold and deliver property of
28 any kind whatsoever when he or she has reason to believe that there is
29 in the possession of such person, firm, corporation, municipal
30 corporation, political subdivision of the state, public corporation, or
31 any agency of the state, property which is or shall become due, owing,
32 or belonging to any employer upon whom a notice of assessment has been
33 served by the department for payments due to the state fund. The
34 effect of a notice and order to withhold and deliver shall be
35 continuous from the date such notice and order to withhold and deliver
36 is first made until the liability out of which such notice and order to

1 withhold and deliver arose is satisfied or becomes unenforceable
2 because of lapse of time. The department shall release the notice and
3 order to withhold and deliver when the liability out of which the
4 notice and order to withhold and deliver arose is satisfied or becomes
5 unenforceable by reason of lapse of time and shall notify the person
6 against whom the notice and order to withhold and deliver was made that
7 such notice and order to withhold and deliver has been released.

8 The notice and order to withhold and deliver shall be served by the
9 sheriff of the county or by the sheriff's deputy, by ~~((certified mail,~~
10 ~~return receipt requested))~~ a method for which receipt can be confirmed
11 or tracked, or by any duly authorized representatives of the director.
12 Any person, firm, corporation, municipal corporation, political
13 subdivision of the state, public corporation or any agency of the state
14 upon whom service has been made is hereby required to answer the notice
15 within twenty days exclusive of the day of service, under oath and in
16 writing, and shall make true answers to the matters inquired of in the
17 notice and order to withhold and deliver. In the event there is in the
18 possession of the party named and served with a notice and order to
19 withhold and deliver, any property which may be subject to the claim of
20 the department, such property shall be delivered forthwith to the
21 director or the director's duly authorized representative upon service
22 of the notice to withhold and deliver which will be held in trust by
23 the director for application on the employer's indebtedness to the
24 department, or for return without interest, in accordance with a final
25 determination of a petition for review, or in the alternative such
26 party shall furnish a good and sufficient surety bond satisfactory to
27 the director conditioned upon final determination of liability. Should
28 any party served and named in the notice to withhold and deliver fail
29 to make answer to such notice and order to withhold and deliver, within
30 the time prescribed herein, it shall be lawful for the court, after the
31 time to answer such order has expired, to render judgment by default
32 against the party named in the notice to withhold and deliver for the
33 full amount claimed by the director in the notice to withhold and
34 deliver together with costs. In the event that a notice to withhold
35 and deliver is served upon an employer and the property found to be
36 subject thereto is wages, then the employer shall be entitled to assert
37 in the answer to all exemptions provided for by chapter 6.27 RCW to
38 which the wage earner may be entitled.

1 **Sec. 8.** RCW 51.52.050 and 2008 c 280 s 1 are each amended to read
2 as follows:

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

34 (2)(a) Whenever the department has taken any action or made any
35 decision relating to any phase of the administration of this title the
36 worker, beneficiary, employer, or other person aggrieved thereby may
37 request reconsideration of the department, or may appeal to the board.

1 In an appeal before the board, the appellant shall have the burden of
2 proceeding with the evidence to establish a prima facie case for the
3 relief sought in such appeal.

4 (b) An order by the department awarding benefits shall become
5 effective and benefits due on the date issued. Subject to (b)(i) and
6 (ii) of this subsection, if the department order is appealed the order
7 shall not be stayed pending a final decision on the merits unless
8 ordered by the board. Upon issuance of the order granting the appeal,
9 the board will provide the worker with notice concerning the potential
10 of an overpayment of benefits paid pending the outcome of the appeal
11 and the requirements for interest on unpaid benefits pursuant to RCW
12 51.52.135. A worker may request that benefits cease pending appeal at
13 any time following the employer's motion for stay or the board's order
14 granting appeal. The request must be submitted in writing to the
15 employer, the board, and the department. Any employer may move for a
16 stay of the order on appeal, in whole or in part. The motion must be
17 filed within fifteen days of the order granting appeal. The board
18 shall conduct an expedited review of the claim file provided by the
19 department as it existed on the date of the department order. The
20 board shall issue a final decision within twenty-five days of the
21 filing of the motion for stay or the order granting appeal, whichever
22 is later. The board's final decision may be appealed to superior court
23 in accordance with RCW 51.52.110. The board shall grant a motion to
24 stay if the moving party demonstrates that it is more likely than not
25 to prevail on the facts as they existed at the time of the order on
26 appeal. The board shall not consider the likelihood of recoupment of
27 benefits as a basis to grant or deny a motion to stay. If a
28 self-insured employer prevails on the merits, any benefits paid may be
29 recouped pursuant to RCW 51.32.240.

30 (i) If upon reconsideration requested by a worker or medical
31 provider, the department has ordered an increase in a permanent partial
32 disability award from the amount reflected in an earlier order, the
33 award reflected in the earlier order shall not be stayed pending a
34 final decision on the merits. However, the increase is stayed without
35 further action by the board pending a final decision on the merits.

36 (ii) If any party appeals an order establishing a worker's wages or
37 the compensation rate at which a worker will be paid temporary or

1 permanent total disability or loss of earning power benefits, the
2 worker shall receive payment pending a final decision on the merits
3 based on the following:

4 (A) When the employer is self-insured, the wage calculation or
5 compensation rate the employer most recently submitted to the
6 department; or

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

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

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

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