

CERTIFICATION OF ENROLLMENT

SENATE BILL 5122

56th Legislature
1999 Regular Session

Passed by the Senate March 4, 1999
YEAS 43 NAYS 0

President of the Senate

Passed by the House April 12, 1999
YEAS 93 NAYS 0

**Speaker of the
House of Representatives**

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5122** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SENATE BILL 5122

Passed Legislature - 1999 Regular Session

State of Washington

56th Legislature

1999 Regular Session

By Senators Fairley and Oke; by request of Department of Labor & Industries

Read first time 01/13/1999. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to the statute of limitations for the repayment or
2 recoupment of industrial insurance benefits induced by claimant fraud;
3 and amending RCW 51.32.240.

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

5 **Sec. 1.** RCW 51.32.240 and 1991 c 88 s 1 are each amended to read
6 as follows:

7 (1) Whenever any payment of benefits under this title is made
8 because of clerical error, mistake of identity, innocent
9 misrepresentation by or on behalf of the recipient thereof mistakenly
10 acted upon, or any other circumstance of a similar nature, all not
11 induced by fraud, the recipient thereof shall repay it and recoupment
12 may be made from any future payments due to the recipient on any claim
13 with the state fund or self-insurer, as the case may be. The
14 department or self-insurer, as the case may be, must make claim for
15 such repayment or recoupment within one year of the making of any such
16 payment or it will be deemed any claim therefor has been waived. The
17 director, pursuant to rules adopted in accordance with the procedures
18 provided in the administrative procedure act, chapter 34.05 RCW, may
19 exercise his discretion to waive, in whole or in part, the amount of

1 any such timely claim where the recovery would be against equity and
2 good conscience.

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

15 (3) Whenever any payment of benefits under this title has been made
16 pursuant to an adjudication by the department or by order of the board
17 or any court and timely appeal therefrom has been made where the final
18 decision is that any such payment was made pursuant to an erroneous
19 adjudication, the recipient thereof shall repay it and recoupment may
20 be made from any future payments due to the recipient on any claim with
21 the state fund or self-insurer, as the case may be. The director,
22 pursuant to rules adopted in accordance with the procedures provided in
23 the administrative procedure act, chapter 34.05 RCW, may exercise his
24 discretion to waive, in whole or in part, the amount of any such
25 payments where the recovery would be against equity and good
26 conscience.

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

36 (5) The worker, beneficiary, or other person affected thereby shall
37 have the right to contest an order assessing an overpayment pursuant to
38 this section in the same manner and to the same extent as provided
39 under RCW 51.52.050 and 51.52.060. In the event such an order becomes

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

27 The director, director's designee, or self-insurer may issue to any
28 person, firm, corporation, municipal corporation, political subdivision
29 of the state, public corporation, or agency of the state, a notice to
30 withhold and deliver property of any kind if there is reason to believe
31 that there is in the possession of such person, firm, corporation,
32 municipal corporation, political subdivision of the state, public
33 corporation, or agency of the state, property that is due, owing, or
34 belonging to any worker, beneficiary, or other person upon whom a
35 warrant has been served for payments due the department or self-
36 insurer. The notice and order to withhold and deliver shall be served
37 by certified mail accompanied by an affidavit of service by mailing or
38 served by the sheriff of the county, or by the sheriff's deputy, or by
39 any authorized representative of the director, director's designee, or

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

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

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

--- END ---