

SHB 3188 - H AMD 1210

By Representative Conway

ADOPTED 03/10/2004

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 51.08.177 and 1986 c 9 s 3 are each amended to read  
4 as follows:

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

11 "Sec. 2. RCW 51.12.070 and 1981 c 128 s 4 are each amended to read  
12 as follows:

13 The provisions of this title (~~shall~~) apply to all work done by  
14 contract; the person, firm, or corporation who lets a contract for such  
15 work (~~shall be~~) is responsible primarily and directly for all  
16 premiums upon the work. The contractor and any subcontractor (~~shall~~  
17 ~~be~~) are subject to the provisions of this title and the person, firm,  
18 or corporation letting the contract (~~shall be~~) is entitled to collect  
19 from the contractor the full amount payable in premiums and the  
20 contractor in turn (~~shall be~~) is entitled to collect from the  
21 subcontractor his or her proportionate amount of the payment.

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

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

28 (2) The subcontractor has a principal place of business which would  
29 be eligible for a business deduction for internal revenue service tax

1 purposes other than that furnished by the contractor for which the  
2 business has contracted to furnish services;

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

5 (4) The subcontractor has contracted to perform:

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

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

11 (5) The subcontractor has an industrial insurance account in good  
12 standing with the department or is a self-insurer. For the purposes of  
13 this subsection, a contractor may consider a subcontractor's account to  
14 be in good standing if, within a year prior to letting the contract or  
15 master service agreement, and at least once a year thereafter, the  
16 contractor has verified with the department that the account is in good  
17 standing and the contractor has not received written notice from the  
18 department that the subcontractor's account status has changed.  
19 Acceptable documentation of verification includes a department document  
20 which includes an issued date or a dated printout of information from  
21 the department's internet web site showing a subcontractor's good  
22 standing. The department shall develop an approach to provide  
23 contractors with verification of the date of inquiries validating that  
24 the subcontractor's account is in good standing.

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

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

32 (1) Upon termination, dissolution, or abandonment of a corporate or  
33 limited liability company business, any officer, member, manager, or  
34 other person having control or supervision of payment and/or reporting  
35 of industrial insurance, or who is charged with the responsibility for  
36 the filing of returns, is personally liable for any unpaid premiums and  
37 interest and penalties on those premiums if such officer or other

1 person willfully fails to pay or to cause to be paid any premiums due  
2 the department under chapter 51.16 RCW.

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

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

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

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

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

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

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

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

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

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

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

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

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

5       (1) Conduct audits and investigations of providers of medical,  
6 chiropractic, dental, vocational, and other health services furnished  
7 to industrially injured workers pursuant to Title 51 RCW. In the  
8 conduct of such audits or investigations, the director or the  
9 director's authorized representatives may examine all records, or  
10 portions thereof, including patient records, for which services were  
11 rendered by a health services provider and reimbursed by the  
12 department, notwithstanding the provisions of any other statute which  
13 may make or purport to make such records privileged or confidential:  
14 PROVIDED, That no original patient records shall be removed from the  
15 premises of the health services provider, and that the disclosure of  
16 any records or information obtained under authority of this section by  
17 the department of labor and industries is prohibited and constitutes a  
18 violation of RCW 42.52.050, unless such disclosure is directly  
19 connected to the official duties of the department: AND PROVIDED  
20 FURTHER, That the disclosure of patient information as required under  
21 this section shall not subject any physician or other health services  
22 provider to any liability for breach of any confidential relationships  
23 between the provider and the patient: AND PROVIDED FURTHER, That the  
24 director or the director's authorized representative shall destroy all  
25 copies of patient medical records in their possession upon completion  
26 of the audit, investigation, or proceedings;

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

30       (3) Terminate or suspend eligibility to participate as a provider  
31 of services furnished to industrially injured workers pursuant to Title  
32 51 RCW; and

33       (4) Pursue collection of unpaid overpayments and/or penalties plus  
34 interest accrued from health care providers pursuant to RCW  
35 51.32.240(6).

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

38       (1)(a) Whenever any payment of benefits under this title is made

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

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

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

23 (2) Whenever the department or self-insurer fails to pay benefits  
24 because of clerical error, mistake of identity, or innocent  
25 misrepresentation, all not induced by recipient (~~fraud~~) willful  
26 misrepresentation, the recipient may request an adjustment of benefits  
27 to be paid from the state fund or by the self-insurer, as the case may  
28 be, subject to the following:

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

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

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

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

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

39 (i) Willful false statement; or

1 (ii) Willful misrepresentation, omission, or concealment of any  
2 material fact.

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

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

10 (e) For purposes of this subsection (5), a material fact is one  
11 which would result in additional, increased, or continued benefits,  
12 including but not limited to facts about physical restrictions, or  
13 work-type activities which either result in wages or income or would be  
14 reasonably expected to do so. Wages or income include the receipt of  
15 any goods or services. For a work-type activity to be reasonably  
16 expected to result in wages or income, a pattern of repeated activity  
17 must exist. For those activities that would reasonably be expected to  
18 result in wages or produce income, but for which actual wage or income  
19 information cannot be reasonably determined, the department shall  
20 impute wages pursuant to RCW 51.08.178(4).

21 (6) The worker, beneficiary, or other person affected thereby shall  
22 have the right to contest an order assessing an overpayment pursuant to  
23 this section in the same manner and to the same extent as provided  
24 under RCW 51.52.050 and 51.52.060. In the event such an order becomes  
25 final under chapter 51.52 RCW and notwithstanding the provisions of  
26 subsections (1) through (5) of this section, the director, director's  
27 designee, or self-insurer may file with the clerk in any county within  
28 the state a warrant in the amount of the sum representing the unpaid  
29 overpayment and/or penalty plus interest accruing from the date the  
30 order became final. The clerk of the county in which the warrant is  
31 filed shall immediately designate a superior court cause number for  
32 such warrant and the clerk shall cause to be entered in the judgment  
33 docket under the superior court cause number assigned to the warrant,  
34 the name of the worker, beneficiary, or other person mentioned in the  
35 warrant, the amount of the unpaid overpayment and/or penalty plus  
36 interest accrued, and the date the warrant was filed. The amount of  
37 the warrant as docketed shall become a lien upon the title to and  
38 interest in all real and personal property of the worker, beneficiary,  
39 or other person against whom the warrant is issued, the same as a

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

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

1 notice for the full amount, plus costs, claimed by the director,  
2 director's designee, or self-insurer in the notice. In the event that  
3 a notice to withhold and deliver is served upon an employer and the  
4 property found to be subject thereto is wages, the employer may assert  
5 in the answer all exemptions provided for by chapter 6.27 RCW to which  
6 the wage earner may be entitled.

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

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

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

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

37 Whenever the department has taken any action or made any decision  
38 relating to any phase of the administration of this title the worker,

1 beneficiary, employer, or other person aggrieved thereby may request  
2 reconsideration of the department, or may appeal to the board. In an  
3 appeal before the board, the appellant shall have the burden of  
4 proceeding with the evidence to establish a prima facie case for the  
5 relief sought in such appeal: PROVIDED, That in an appeal from an  
6 order of the department that alleges ((~~fraud~~)) willful  
7 misrepresentation, the department or self-insured employer shall  
8 initially introduce all evidence in its case in chief. Any such person  
9 aggrieved by the decision and order of the board may thereafter appeal  
10 to the superior court, as prescribed in this chapter.

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

13 NEW SECTION. Sec. 10. The department shall adopt rules to  
14 implement this act."

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**ADOPTED 03/10/2004**

15 On page 1, line 2 of the title, after "penalties;" strike the  
16 remainder of the title and insert "amending RCW 51.08.177, 51.12.070,  
17 51.36.110, 51.32.240, and 51.52.050; adding new sections to chapter  
18 51.48 RCW; adding a new section to chapter 51.16 RCW; and creating new  
19 sections."

--- END ---