

HOUSE BILL 2946

State of Washington                      58th Legislature                      2004 Regular Session

By Representatives McMorris, Condotta, Clements, Chandler, Armstrong and Hinkle

Read first time 01/23/2004. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to authorizing self-insurers to make claim  
2 decisions and actively participate in workers' compensation claims;  
3 amending RCW 51.04.020, 51.04.030, 51.04.040, 51.04.085, 51.08.040,  
4 51.08.173, 51.14.110, 51.14.120, 51.14.130, 51.16.120, 51.24.030,  
5 51.24.050, 51.24.060, 51.24.070, 51.24.080, 51.24.090, 51.28.010,  
6 51.28.020, 51.28.030, 51.28.040, 51.28.055, 51.28.060, 51.28.070,  
7 51.32.010, 51.32.040, 51.32.055, 51.32.060, 51.32.067, 51.32.075,  
8 51.32.080, 51.32.095, 51.32.110, 51.32.130, 51.32.150, 51.32.160,  
9 51.32.195, 51.32.210, 51.32.220, 51.32.225, 51.32.230, 51.32.240,  
10 51.32.250, 51.36.010, 51.36.015, 51.36.020, 51.36.060, 51.36.070,  
11 51.48.017, 51.48.040, 51.48.080, 51.52.050, 51.52.070, and 51.52.080;  
12 reenacting and amending RCW 51.52.060; adding new sections to chapter  
13 51.14 RCW; repealing RCW 51.32.190; and providing an effective date.

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

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

17            (1) The director shall:

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

1 of this title and the periodic auditing of self-insured employers under  
2 RCW 51.48.040 (4) through (6);

3 ~~((2))~~ (b) Ascertain and establish the amounts to be paid into and  
4 out of the accident fund;

5 ~~((3))~~ (c) Regulate the proof of accident and extent thereof, the  
6 proof of death and the proof of relationship and the extent of  
7 dependency;

8 ~~((4))~~ (d) Supervise the medical, surgical, and hospital treatment  
9 to the intent that it may be in all cases efficient and up to the  
10 recognized standard of modern surgery;

11 ~~((5))~~ (e) Issue proper receipts for moneys received and  
12 certificates for benefits accrued or accruing;

13 ~~((6))~~ (f) Investigate the cause of all serious injuries and  
14 report to the governor from time to time any violations or laxity in  
15 performance of protective statutes or regulations coming under the  
16 observation of the department;

17 ~~((7))~~ (g) Compile statistics which will afford reliable  
18 information upon which to base operations of all divisions under the  
19 department;

20 ~~((8))~~ (h) Make an annual report to the governor of the workings  
21 of the department;

22 ~~((9))~~ (i) Be empowered to enter into agreements with the  
23 appropriate agencies of other states relating to conflicts of  
24 jurisdiction where the contract of employment is in one state and  
25 injuries are received in the other state, and insofar as permitted by  
26 the Constitution and laws of the United States, to enter into similar  
27 agreements with the provinces of Canada; and

28 ~~((10))~~ (j) Designate a medical director who is licensed under  
29 chapter 18.57 or 18.71 RCW.

30 (2) Self-insured employers shall be vested with the powers and  
31 duties necessary to process all aspects of industrial injury or  
32 occupational disease claims of their injured workers without prior  
33 approval or consent of the department subject to the provisions of this  
34 title.

35 **Sec. 2.** RCW 51.04.030 and 1998 c 230 s 1 are each amended to read  
36 as follows:

37 (1) The director shall supervise the providing of prompt and

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

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

1 receiving the services, shall be charged or paid at a rate or rates  
2 exceeding those specified in such fee schedule, and no contract  
3 providing for greater fees shall be valid as to the excess. The  
4 establishment of such a schedule, exclusive of conversion factors, does  
5 not constitute "agency action" as used in RCW 34.05.010(3), nor does  
6 such a fee schedule constitute a "rule" as used in RCW 34.05.010(16).

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

16 **Sec. 3.** RCW 51.04.040 and 1987 c 316 s 1 are each amended to read  
17 as follows:

18 The director (~~and his or her~~), the director's authorized  
19 assistants (~~shall have power to~~), or the self-insurer, as the case  
20 may be, may issue subpoenas to enforce the attendance and testimony of  
21 witnesses and the production and examination of books, papers,  
22 photographs, tapes, and records before the department or self-insurer  
23 in connection with any claim made to the department or self-insurer,  
24 any billing submitted to the department or self-insurer, or the  
25 assessment or collection of premiums. The superior court shall have  
26 the power to enforce any such subpoena by proper proceedings.

27 **Sec. 4.** RCW 51.04.085 and 1977 ex.s. c 323 s 26 are each amended  
28 to read as follows:

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

34 **Sec. 5.** RCW 51.08.040 and 1961 c 23 s 51.08.040 are each amended  
35 to read as follows:

1 "Department" means the department of labor and industries, its  
2 director, and its director's appointees and employees.

3 **Sec. 6.** RCW 51.08.173 and 1983 c 174 s 1 are each amended to read  
4 as follows:

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

9 **Sec. 7.** RCW 51.14.110 and 1971 ex.s. c 289 s 35 are each amended  
10 to read as follows:

11 Every self-insurer shall maintain a record of all payments of  
12 compensation made under this title. In the event of periodic audit by  
13 the department or protest by the injured worker, the self-insurer shall  
14 furnish to the ~~((director))~~ department all information ~~((he))~~ it has in  
15 ~~((his))~~ its possession ~~((as to any disputed claim)),~~ upon forms  
16 approved by the ~~((director))~~ department.

17 **Sec. 8.** RCW 51.14.120 and 2001 c 152 s 1 are each amended to read  
18 as follows:

19 (1) The self-insurer shall provide, when authorized under RCW  
20 51.28.070, a copy of the employee's claim file at no cost within  
21 fifteen days of receipt of a request by the employee or the employee's  
22 representative, and shall provide the physician performing an  
23 examination with all relevant medical records from the worker's claim  
24 file, but only to the extent required of the department under RCW  
25 51.36.070. If the self-insured employer determines that release of the  
26 claim file to an unrepresented worker in whole or in part~~((r))~~ may not  
27 be in the worker's best interests, the employer must ~~((submit a request~~  
28 ~~for denial with))~~ issue an order under section 10 of this act that  
29 includes an explanation ~~((along with a copy of that portion of the~~  
30 ~~claim file not previously provided within twenty days after the request~~  
31 ~~from))~~ to the worker. In the case of second or subsequent requests, a  
32 reasonable charge for copying may be made. The self-insurer shall  
33 provide the entire contents of the claim file unless the request is for  
34 only a particular portion of the file. Any new material added to the

1 claim file after the initial request shall be provided under the same  
2 terms and conditions as the initial request.

3 (2) The self-insurer shall transmit notice to the department of any  
4 protest or appeal by an employee relating to the administration of an  
5 industrial injury or occupational disease claim under this chapter  
6 within five working days of receipt. The date that the protest or  
7 appeal is received by the self-insurer shall be deemed to be the date  
8 the protest is received by the department for the purpose of RCW  
9 51.52.050.

10 ~~((3) The self-insurer shall submit a medical report with the  
11 request for closure of a claim under this chapter.))~~

12 **Sec. 9.** RCW 51.14.130 and 1993 c 122 s 3 are each amended to read  
13 as follows:

14 The self-insurer shall ~~((request allowance or denial of))~~ allow or  
15 deny a claim within sixty days from the date that the claim is filed~~((-~~  
16 ~~If the self-insurer fails to act within sixty days, the department~~  
17 ~~shall promptly intervene and adjudicate the claim))~~ unless extended for  
18 up to ninety days by notice to the worker for good cause.

19 NEW SECTION. **Sec. 10.** A new section is added to chapter 51.14 RCW  
20 to read as follows:

21 (1) Self-insured employers shall issue orders encompassing their  
22 claims decisions under the same circumstances and parameters and to the  
23 same force and effect as orders issued by the department so long as  
24 such orders conform to the requirements of RCW 51.52.050. This  
25 includes but is not limited to allowance, denial and reopening of  
26 claims, payment of monthly compensation, provision of medical care and  
27 treatment, specification of conditions allowed, denied, or segregated  
28 under the claim, closure of claims with or without award for permanent  
29 disability, reduction, suspension, or denial of benefits pursuant to  
30 RCW 51.32.110, and eligibility for vocational services pursuant to RCW  
31 51.32.095.

32 (2) If a worker or beneficiary requests reconsideration or appeals  
33 a self-insurer order, the department may reconsider the order under RCW  
34 51.52.050, or may direct submission of further evidence under RCW  
35 51.52.050 and 51.52.060. A subsequent order issued by the department  
36 may be appealed by any aggrieved party.

1       **Sec. 11.** RCW 51.16.120 and 1984 c 63 s 1 are each amended to read  
2 as follows:

3       (1) Whenever a worker has a previous bodily disability from any  
4 previous injury or disease, whether known or unknown to the employer,  
5 and shall suffer a further disability from injury or occupational  
6 disease in employment covered by this title and become totally and  
7 permanently disabled from the combined effects thereof or die when  
8 death was substantially accelerated by the combined effects thereof,  
9 then the experience record of an employer insured with the state fund  
10 at the time of said further injury or disease shall be charged and a  
11 self-insured employer shall pay directly into the reserve fund only the  
12 accident cost which would have resulted solely from said further injury  
13 or disease, had there been no preexisting disability, and which  
14 accident cost shall be based upon an evaluation of the disability by  
15 medical experts. The difference between the charge thus assessed to  
16 such employer at the time of said further injury or disease and the  
17 total cost of the pension reserve shall be assessed against the second  
18 injury fund. The department shall pass upon the application of this  
19 section in all state fund cases where benefits are paid for total  
20 permanent disability or death and issue an order thereon appealable by  
21 the employer. Pending outcome of such appeal the transfer or payment  
22 shall be made as required by such order. In cases involving self-  
23 insurers, the department shall issue an order appealable by the  
24 employer passing on the application of this section within sixty days  
25 of a written request by the self-insurer. If the department fails to  
26 issue an order passing on the application of this section within sixty  
27 days, this section applies. When this section applies, the department  
28 shall reimburse the self-insurer from the second injury fund all  
29 monthly compensation paid to the worker or beneficiary beginning with  
30 the first date of permanent total disability or death of the worker.

31       (2) The department shall, in cases of claims of workers sustaining  
32 injuries or occupational diseases in the employ of state fund  
33 employers, recompute the experience record of such employers when the  
34 claims of workers injured in their employ have been found to qualify  
35 for payments from the second injury fund after the regular time for  
36 computation of such experience records and the department may make  
37 appropriate adjustments in such cases including cash refunds or credits  
38 to such employers.

1 (3) To encourage employment of injured workers who are not  
2 reemployed by the employer at the time of injury, the department may  
3 adopt rules providing for the reduction or elimination of premiums or  
4 assessments from subsequent employers of such workers and may also  
5 adopt rules for the reduction or elimination of charges against such  
6 employers in the event of further injury to such workers in their  
7 employ.

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

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

14 (2) In every action brought under this section, the plaintiff shall  
15 give notice to the department or self-insurer, as the case may be, when  
16 the action is filed. The department or self-insurer may file a notice  
17 of statutory interest in recovery. When such notice has been filed by  
18 the department or self-insurer, the parties shall thereafter serve  
19 copies of all notices, motions, pleadings, and other process on the  
20 department or self-insurer. The department or self-insurer may then  
21 intervene as a party in the action to protect its statutory interest in  
22 recovery.

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

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

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

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

35 (1) An election not to proceed against the third person operates as  
36 an assignment of the cause of action to the department or self-insurer,



1 as the case may be, which may prosecute or compromise the action in its  
2 discretion in the name of the injured worker, beneficiary or legal  
3 representative.

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

9 (3) If a beneficiary is a minor child, an election not to proceed  
10 against a third person on such beneficiary's cause of action may be  
11 exercised by the beneficiary's legal custodian or guardian.

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

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

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

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

25 (d) The injured worker or beneficiary shall be paid any remaining  
26 balance.

27 (5) Thereafter no payment shall be made to or on behalf of a worker  
28 or beneficiary by the department (~~and/or~~) or self-insurer, as the  
29 case may be, for such injury until the amount of any further  
30 compensation and benefits shall equal any such remaining balance.  
31 Thereafter, such benefits shall be paid by the department (~~and/or~~) or  
32 self-insurer, as the case may be, to or on behalf of the worker or  
33 beneficiary as though no recovery had been made from a third person.

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

37 (a) The prosecution of such cause of action shall also be for the

1 benefit of the department to the extent of compensation and benefits  
2 paid and payable from state funds;

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

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

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

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

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

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

21 (a) The costs and reasonable attorneys' fees shall be paid  
22 proportionately by the injured worker or beneficiary and the department  
23 and/or self-insurer(~~(: PROVIDED, That)~~), as the case may be. However,  
24 the department and/or self-insurer may require court approval of costs  
25 and attorneys' fees or may petition a court for determination of the  
26 reasonableness of costs and attorneys' fees;

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

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

34 (i) The department and/or self-insurer shall bear its proportionate  
35 share of the costs and reasonable attorneys' fees incurred by the  
36 worker or beneficiary to the extent of the benefits paid under this

1 title(~~(:—PROVIDED, That)~~). However, the department's and/or self-  
2 insurer's proportionate share shall not exceed one hundred percent of  
3 the costs and reasonable attorneys' fees;

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

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

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

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

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

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

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

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

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

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

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

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

1 which shall be added to the amount of the warrant. A copy of such  
2 warrant shall be mailed to the injured worker or beneficiary within  
3 three days of filing with the clerk.

4 (7) The (~~director, or the director's designee,~~) department or  
5 self-insurer, as the case may be, may issue to any person, firm,  
6 corporation, municipal corporation, political subdivision of the state,  
7 public corporation, or agency of the state, a notice and order to  
8 withhold and deliver property of any kind if he or she has reason to  
9 believe that there is in the possession of such person, firm,  
10 corporation, municipal corporation, political subdivision of the state,  
11 public corporation, or agency of the state, property which is due,  
12 owing, or belonging to any worker or beneficiary upon whom a warrant  
13 has been served by the department or self-insurer for payments due to  
14 the state fund or self-insurer. The notice and order to withhold and  
15 deliver shall be served by the sheriff of the county or by the  
16 sheriff's deputy; by certified mail, return receipt requested; or by  
17 any authorized representatives of the (~~director~~) department or self-  
18 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 of 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 which may be subject to the claim of the department or  
26 self-insurer, such property shall be delivered forthwith to the  
27 (~~director or the director's authorized representative~~) department or  
28 self-insurer, as the case may be, upon demand. If the party served and  
29 named in the notice and order fails to answer the notice and order  
30 within the time prescribed in this section, the court may, after the  
31 time to answer such order has expired, render judgment by default  
32 against the party named in the notice for the full amount claimed by  
33 the director or self-insurer in the notice together with costs. In the  
34 event that a notice to withhold and deliver is served upon an employer  
35 and the property found to be subject thereto is wages, the employer may  
36 assert in the answer to all exemptions provided for by chapter 6.27 RCW  
37 to which the wage earner may be entitled.

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

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

7       (2) Unless an election is made within sixty days of the receipt of  
8 the demand, and unless an action is instituted or settled within the  
9 time granted by the department or self-insurer, the injured worker or  
10 beneficiary is deemed to have assigned the action to the department or  
11 self-insurer, as the case may be. The department or self-insurer shall  
12 allow the worker or beneficiary at least ninety days from the election  
13 to institute or settle the action. When a beneficiary is a minor child  
14 the demand shall be served upon the legal custodian or guardian of such  
15 beneficiary.

16       (3) If an action which has been filed is not diligently prosecuted,  
17 the department or self-insurer, as the case may be, may petition the  
18 court in which the action is pending for an order assigning the cause  
19 of action to the department or self-insurer. Upon a sufficient showing  
20 of a lack of diligent prosecution the court in its discretion may issue  
21 the order.

22       (4) If the department or self-insurer has taken an assignment of  
23 the third party cause of action under subsection (2) of this section,  
24 the injured worker or beneficiary may, at the discretion of the  
25 department or self-insurer, exercise a right of reelection and assume  
26 the cause of action subject to reimbursement of litigation expenses  
27 incurred by the department or self-insurer.

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

30       (1) If the injured worker or beneficiary elects to seek damages  
31 from the third person, notice of the election must be given to the  
32 department or self-insurer, as the case may be. The notice shall be by  
33 registered mail, certified mail, or personal service. If an action is  
34 filed by the injured worker or beneficiary, a copy of the complaint  
35 must be sent by registered mail to the department or self-insurer, as  
36 the case may be.

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

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

7 (1) Any compromise or settlement of the third party cause of action  
8 by the injured worker or beneficiary which results in less than the  
9 entitlement under this title is void unless made with the written  
10 approval of the department or self-insurer(~~(:PROVIDED, That))~~, as the  
11 case may be. However, for the purposes of this chapter, "entitlement"  
12 means benefits and compensation paid and estimated by the department or  
13 self-insurer, as the case may be, to be paid in the future.

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

20 **Sec. 18.** RCW 51.28.010 and 2001 c 231 s 1 are each amended to read  
21 as follows:

22 (1) Whenever any accident occurs to any worker it shall be the duty  
23 of such worker or someone in his or her behalf to forthwith report such  
24 accident to his or her employer, superintendent, or supervisor in  
25 charge of the work, and of the employer to at once report such accident  
26 and the injury resulting therefrom to the department pursuant to RCW  
27 51.28.025 where the worker has received treatment from a physician, has  
28 been hospitalized, disabled from work, or has died as the apparent  
29 result of such accident and injury.

30 (2) Upon receipt of such notice of accident, the department or  
31 self-insurer, as the case may be, shall immediately forward to the  
32 worker or his or her beneficiaries or dependents notification, in  
33 nontechnical language, of their rights under this title. The notice  
34 must specify the worker's right to receive health services from a  
35 physician of the worker's choice under RCW 51.36.010, including

1 chiropractic services under RCW 51.36.015, and must list the types of  
2 providers authorized to provide these services. The notice must be  
3 given on department forms.

4 **Sec. 19.** RCW 51.28.020 and 2001 c 231 s 2 are each amended to read  
5 as follows:

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

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

24 ((-2) If application for compensation is made to a self-insured  
25 employer, he or she shall forthwith send a copy of the application to  
26 the department.))

27 **Sec. 20.** RCW 51.28.030 and 1972 ex.s. c 43 s 17 are each amended  
28 to read as follows:

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



1        Upon receipt of notice of accident under RCW 51.28.010, the  
2 director or self-insurer, as the case may be, shall immediately forward  
3 to the party or parties required to make application for compensation  
4 under this section, notification on department forms, in nontechnical  
5 language, of their rights under this title.

6        **Sec. 21.** RCW 51.28.040 and 1977 ex.s. c 199 s 1 are each amended  
7 to read as follows:

8        If change of circumstances warrants an increase or rearrangement of  
9 compensation, like application shall be made therefor to the department  
10 or self-insurer, as the case may be. Where the application has been  
11 granted, compensation and other benefits if in order shall be allowed  
12 for periods of time up to sixty days prior to the receipt of such  
13 application.

14        **Sec. 22.** RCW 51.28.055 and 2003 2nd sp.s. c 2 s 1 are each amended  
15 to read as follows:

16        (1) Except as provided in subsection (2) of this section for claims  
17 filed for occupational hearing loss, claims for occupational disease or  
18 infection to be valid and compensable must be filed within two years  
19 following the date the worker had written notice from a physician: (a)  
20 Of the existence of his or her occupational disease, and (b) that a  
21 claim for disability benefits may be filed. The notice shall also  
22 contain a statement that the worker has two years from the date of the  
23 notice to file a claim. If the employer is self-insured, the physician  
24 shall file the notice with the self-insurer. If the employer is a  
25 state fund employer, the physician shall file the notice with the  
26 department. The department or self-insurer shall send a copy to the  
27 worker ((and to the self-insurer if the worker's employer is self-  
28 insured)). However, a claim is valid if it is filed within two years  
29 from the date of death of the worker suffering from an occupational  
30 disease.

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

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

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

5 **Sec. 23.** RCW 51.28.060 and 1977 ex.s. c 350 s 35 are each amended  
6 to read as follows:

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

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

17 **Sec. 24.** RCW 51.28.070 and 1990 c 209 s 2 are each amended to read  
18 as follows:

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

1 rendering assistance to the department or self-insurer at any stage of  
2 the proceedings on any matter pertaining to the administration of this  
3 title.

4 **Sec. 25.** RCW 51.32.010 and 1977 ex.s. c 350 s 37 are each amended  
5 to read as follows:

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

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

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

32 (2)(a) If any worker suffers (i) a permanent partial injury and  
33 dies from some other cause than the accident which produced the injury  
34 before he or she receives payment of the award for the permanent  
35 partial injury or (ii) any other injury before he or she receives  
36 payment of any monthly installment covering any period of time before

1 his or her death, the amount of the permanent partial disability award  
2 or the monthly payment, or both, shall be paid to the surviving spouse  
3 or the child or children if there is no surviving spouse. If there is  
4 no surviving spouse and no child or children, the award or the amount  
5 of the monthly payment shall be paid by the department or self-insurer,  
6 as the case may be, and distributed consistent with the terms of the  
7 decedent's will or, if the decedent dies intestate, consistent with the  
8 terms of RCW 11.04.015.

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

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

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

32 (b) If any prisoner is injured in the course of his or her  
33 employment while participating in a work or training release program  
34 authorized by chapter 72.65 RCW and is subject to the provisions of  
35 this title, he or she is entitled to payments under this title, subject  
36 to the requirements of chapter 72.65 RCW, unless his or her  
37 participation in the program has been canceled, or unless he or she is

1 returned to a state correctional institution, as defined in RCW  
2 72.65.010(3), as a result of revocation of parole or new sentence.

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

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

11 **Sec. 27.** RCW 51.32.055 and 1997 c 416 s 1 are each amended to read  
12 as follows:

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

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

32 (~~(3) A request for determination of permanent disability shall be~~  
33 ~~examined by the department or, if authorized in subsection (9) of this~~  
34 ~~section, the self insurer, and the department shall issue an order in~~  
35 ~~accordance with RCW 51.52.050 or, in the case of a self insured~~  
36 ~~employer, the self insurer may: (a) Enter a written order,~~

1 ~~communicated to the worker and the department self-insurance section in~~  
2 ~~accordance with subsection (9) of this section, or (b) request the~~  
3 ~~department to issue an order in accordance with RCW 51.52.050.~~

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

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

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

28 ~~(7)(a) If a claim (i) is accepted by a self-insurer after June 30,~~  
29 ~~1986, and before August 1, 1997, (ii) involves only medical treatment~~  
30 ~~and the payment of temporary disability compensation under RCW~~  
31 ~~51.32.090 or only the payment of temporary disability compensation~~  
32 ~~under RCW 51.32.090, (iii) at the time medical treatment is concluded~~  
33 ~~does not involve permanent disability, (iv) is one with respect to~~  
34 ~~which the department has not intervened under subsection (6) of this~~  
35 ~~section, and (v) the injured worker has returned to work with the self-~~  
36 ~~insured employer of record, whether at the worker's previous job or at~~  
37 ~~a job that has comparable wages and benefits, the claim may be closed~~

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

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

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

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

36 ~~(b) All determinations of permanent disability for claims accepted~~  
37 ~~under this subsection (8) by self-insurers shall be made by the self-~~

1 ~~insured section of the department under subsections (1) through (4) of~~  
2 ~~this section.~~

3 ~~(9)(a) If a claim: (i) Is accepted by a self-insurer after July~~  
4 ~~31, 1997; (ii)(A) involves only medical treatment, or medical treatment~~  
5 ~~and the payment of temporary disability compensation under RCW~~  
6 ~~51.32.090, and a determination of permanent partial disability, if~~  
7 ~~applicable, has been made by the self-insurer as authorized in this~~  
8 ~~subsection; or (B) involves only the payment of temporary disability~~  
9 ~~compensation under RCW 51.32.090 and a determination of permanent~~  
10 ~~partial disability, if applicable, has been made by the self-insurer as~~  
11 ~~authorized in this subsection; (iii) is one with respect to which the~~  
12 ~~department has not intervened under subsection (6) of this section; and~~  
13 ~~(iv) concerns an injured worker who has returned to work with the self-~~  
14 ~~insured employer of record, whether at the worker's previous job or at~~  
15 ~~a job that has comparable wages and benefits, the claim may be closed~~  
16 ~~by the self-insurer, subject to reporting of claims to the department~~  
17 ~~in a manner prescribed by department rules adopted under chapter 34.05~~  
18 ~~RCW.~~

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

30 ~~(c) Upon closure of a claim under this subsection (9), the self-~~  
31 ~~insurer shall enter a written order, communicated to the worker and the~~  
32 ~~department self-insurance section, which contains the following~~  
33 ~~statement clearly set forth in bold face type: "This order constitutes~~  
34 ~~notification that your claim is being closed with such medical benefits~~  
35 ~~and temporary disability compensation as provided to date and with such~~  
36 ~~award for permanent partial disability, if any, as set forth below, and~~  
37 ~~with the condition that you have returned to work with the self-insured~~  
38 ~~employer. If for any reason you disagree with the conditions or~~



1 duration of your return to work or the medical benefits, temporary  
2 disability compensation provided, or permanent partial disability that  
3 has been awarded, you must protest in writing to the Department of  
4 Labor and Industries, Self Insurance Section, within sixty days of the  
5 date you received this order. If you do not protest this order to the  
6 department, this order will become final."

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

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

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

28 (12) For the purposes of this section, "comparable wages and  
29 benefits" means wages and benefits that are at least ninety five  
30 percent of the wages and benefits received by the worker at the time of  
31 injury.)

32 **Sec. 28.** RCW 51.32.060 and 1993 c 521 s 2 are each amended to read  
33 as follows:

34 (1) When the ((supervisor of industrial insurance shall))  
35 department or the self-insurer, as the case may be, determines that  
36 permanent total disability results from the injury, the worker shall  
37 receive monthly during the period of such disability:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

15  
16  
17  
18  
19  
20 The limitations under this subsection shall not apply to the  
21 payments provided for in subsection (3) of this section.

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

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

29 **Sec. 29.** RCW 51.32.067 and 1986 c 58 s 4 are each amended to read  
30 as follows:

31 (1) After a worker elects one of the options in (a), (b), or (c) of  
32 this subsection, that option shall apply only if the worker dies during  
33 a period of permanent total disability from a cause unrelated to the  
34 injury, leaving a surviving spouse, child, children, or other  
35 dependent. If, after making an election under this subsection, a

1 worker dies from a cause related to the injury during a period of  
2 permanent total disability, his or her beneficiaries shall receive  
3 benefits under RCW 51.32.050 (2) through (5).

4 (a) **Option I.** An injured worker selecting this option shall  
5 receive the benefits provided by RCW 51.32.060, with no benefits being  
6 paid to the worker's surviving spouse, children, or others.

7 (b) **Option II.** An injured worker selecting this option shall  
8 receive an actuarially reduced benefit which upon death shall be  
9 continued throughout the life of and paid to the surviving spouse,  
10 child, or other dependent as the worker has nominated by written  
11 designation duly executed and filed with the department or self-  
12 insurer, as the case may be.

13 (c) **Option III.** An injured worker selecting this option shall  
14 receive an actuarially reduced benefit and, upon death, one-half of the  
15 reduced benefit shall be continued throughout the life of and paid to  
16 the surviving spouse, child, or other dependent as the worker has  
17 nominated by written designation duly executed and filed with the  
18 department or self-insurer, as the case may be.

19 (2) The worker shall make the election in writing and the worker's  
20 spouse, if any, shall consent in writing as a prerequisite to the  
21 election of Option I.

22 (3) The department shall adopt such rules as may be necessary to  
23 implement this section.

24 **Sec. 30.** RCW 51.32.075 and 1988 c 161 s 7 are each amended to read  
25 as follows:

26 The compensation or death benefits payable pursuant to the  
27 provisions of this chapter for temporary total disability, permanent  
28 total disability, or death arising out of injuries or occupational  
29 diseases shall be adjusted as follows:

30 (1) On July 1, 1982, there shall be an adjustment for those whose  
31 right to compensation was established on or after July 1, 1971, and  
32 before July 1, 1982. The adjustment shall be determined by multiplying  
33 the amount of compensation to which they are entitled by a fraction,  
34 the denominator of which shall be the average monthly wage in the state  
35 under RCW 51.08.018 for the fiscal year in which such person's right to  
36 compensation was established, and the numerator of which shall be the  
37 average monthly wage in the state under RCW 51.08.018 on July 1, 1982.

1 (2) In addition to the adjustment established by subsection (1) of  
2 this section, there shall be another adjustment on July 1, 1983, for  
3 those whose right to compensation was established on or after July 1,  
4 1971, and before July 1983, which shall be determined by multiplying  
5 the amount of compensation to which they are entitled by a fraction,  
6 the denominator of which shall be the average monthly wage in the state  
7 under RCW 51.08.018 for the fiscal year in which such person's right to  
8 compensation was established, and the numerator of which shall be the  
9 average monthly wage in the state under RCW 51.08.018 on July 1, 1983.

10 (3) In addition to the adjustments under subsections (1) and (2) of  
11 this section, further adjustments shall be made beginning on July 1,  
12 1984, and on each July 1st thereafter for those whose right to  
13 compensation was established on or after July 1, 1971. The adjustment  
14 shall be determined by multiplying the amount of compensation to which  
15 they are entitled by a fraction, the denominator of which shall be the  
16 average monthly wage in the state under RCW 51.08.018 for the fiscal  
17 year in which such person's right to compensation was established, and  
18 the numerator of which shall be the average monthly wage in the state  
19 under RCW 51.08.018 on July 1st of the year in which the adjustment is  
20 being made. The department or self-insurer, as the case may be, shall  
21 adjust the resulting compensation rate to the nearest whole cent, not  
22 to exceed the average monthly wage in the state as computed under RCW  
23 51.08.018.

24 **Sec. 31.** RCW 51.32.080 and 1993 c 520 s 1 are each amended to read  
25 as follows:

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

29

LOSS BY AMPUTATION	
30	Of leg above the knee joint with short
31	thigh stump (3" or less below the
32	tuberosity of ischium).....
	\$54,000.00
33	Of leg at or above knee joint with
34	functional stump.....
	48,600.00
35	Of leg below knee joint.....
	43,200.00

1	Of leg at ankle (Syme) . . . . .	37,800.00
2	Of foot at mid-metatarsals . . . . .	18,900.00
3	Of great toe with resection of metatarsal	
4	bone . . . . .	11,340.00
5	Of great toe at metatarsophalangeal	
6	joint . . . . .	6,804.00
7	Of great toe at interphalangeal joint . . . . .	3,600.00
8	Of lesser toe (2nd to 5th) with resection of	
9	metatarsal bone . . . . .	4,140.00
10	Of lesser toe at metatarsophalangeal	
11	joint . . . . .	2,016.00
12	Of lesser toe at proximal interphalangeal	
13	joint . . . . .	1,494.00
14	Of lesser toe at distal interphalangeal	
15	joint . . . . .	378.00
16	Of arm at or above the deltoid insertion or	
17	by disarticulation at the shoulder . . . . .	54,000.00
18	Of arm at any point from below the deltoid	
19	insertion to below the elbow joint at	
20	the insertion of the biceps tendon . . . . .	51,300.00
21	Of arm at any point from below the elbow	
22	joint distal to the insertion of the	
23	biceps tendon to and including	
24	mid-metacarpal amputation of the	
25	hand . . . . .	48,600.00
26	Of all fingers except the thumb at	
27	metacarpophalangeal joints . . . . .	29,160.00
28	Of thumb at metacarpophalangeal joint or	
29	with resection of carpometacarpal	
30	bone . . . . .	19,440.00
31	Of thumb at interphalangeal joint . . . . .	9,720.00
32	Of index finger at metacarpophalangeal	
33	joint or with resection of metacarpal	
34	bone . . . . .	12,150.00
35	Of index finger at proximal	
36	interphalangeal joint . . . . .	9,720.00

1	Of index finger at distal interphalangeal	
2	joint .....	5,346.00
3	Of middle finger at metacarpophalangeal	
4	joint or with resection of metacarpal	
5	bone .....	9,720.00
6	Of middle finger at proximal	
7	interphalangeal joint .....	7,776.00
8	Of middle finger at distal interphalangeal	
9	joint .....	4,374.00
10	Of ring finger at metacarpophalangeal	
11	joint or with resection of metacarpal	
12	bone .....	4,860.00
13	Of ring finger at proximal interphalangeal	
14	joint .....	3,888.00
15	Of ring finger at distal interphalangeal	
16	joint .....	2,430.00
17	Of little finger at metacarpophalangeal	
18	joint or with resection of metacarpal	
19	bone .....	2,430.00
20	Of little finger at proximal interphalangeal	
21	joint .....	1,944.00
22	Of little finger at distal interphalangeal	
23	joint .....	972.00

24 MISCELLANEOUS

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

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

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

34 (ii) Beginning on July 1, 1994, and each July 1 thereafter, the  
35 compensation amounts for the specified disabilities listed in (a) of  
36 this subsection, as adjusted under (b)(i) of this subsection, shall be  
37 readjusted to reflect the percentage change in the consumer price

1 index, calculated as follows: The index for the calendar year  
2 preceding the year in which the July calculation is made, to be known  
3 as "calendar year A," is divided by the index for the calendar year  
4 preceding calendar year A, and the resulting ratio is multiplied by the  
5 compensation amount in effect on June 30 immediately preceding the July  
6 1st on which the respective calculation is made. For the purposes of  
7 this subsection, "index" means the same as the definition in RCW  
8 2.12.037(1).

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

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

33 (b) Until July 1, 1993, for purposes of calculating monetary  
34 benefits under (a) of this subsection, the amount payable for total  
35 bodily impairment shall be deemed to be ninety thousand dollars.  
36 Beginning on July 1, 1993, for purposes of calculating monetary  
37 benefits under (a) of this subsection, the amount payable for total  
38 bodily impairment shall be adjusted as follows:



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

4 (ii) Beginning on July 1, 1994, and each July 1 thereafter, the  
5 amount payable for total bodily impairment prescribed in (b)(i) of this  
6 subsection shall be adjusted as provided in subsection (1)(b)(ii) of  
7 this section.

8 (c) Until July 1, 1993, the total compensation for all unspecified  
9 permanent partial disabilities resulting from the same injury shall not  
10 exceed the sum of ninety thousand dollars. Beginning on July 1, 1993,  
11 total compensation for all unspecified permanent partial disabilities  
12 resulting from the same injury shall not exceed a sum calculated as  
13 follows:

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

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

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

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

34 (6) When the compensation provided for in subsections (1) through  
35 (3) of this section exceeds three times the average monthly wage in the  
36 state as computed under the provisions of RCW 51.08.018, payment shall  
37 be made in monthly payments in accordance with the schedule of  
38 temporary total disability payments set forth in RCW 51.32.090 until

1 such compensation is paid to the injured worker in full, except that  
2 the first monthly payment shall be in an amount equal to three times  
3 the average monthly wage in the state as computed under the provisions  
4 of RCW 51.08.018, and interest shall be paid at the rate of eight  
5 percent on the unpaid balance of such compensation commencing with the  
6 second monthly payment. However, upon application of the injured  
7 worker or survivor the monthly payment may be converted, in whole or in  
8 part, into a lump sum payment, in which event the monthly payment shall  
9 cease in whole or in part. Such conversion may be made only upon  
10 written application of the injured worker or survivor to the department  
11 or self-insurer, as the case may be, and shall rest in the discretion  
12 of the department or self-insurer, as the case may be, depending upon  
13 the merits of each individual application. Upon the death of a worker  
14 all unpaid installments accrued shall be paid according to the payment  
15 schedule established prior to the death of the worker to the widow or  
16 widower, or if there is no widow or widower surviving, to the dependent  
17 children of such claimant, and if there are no such dependent children,  
18 then to such other dependents as defined by this title.

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

21 **Sec. 32.** RCW 51.32.095 and 1999 c 110 s 1 are each amended to read  
22 as follows:

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

1 ~~his or her sole discretion, pay or, if the employer is a self-insurer,~~  
2 ~~direct the self-insurer to pay the cost as provided in subsection (3)~~  
3 ~~of this section.))~~ The department or self-insurer, as the case may be,  
4 may pay the costs as provided in subsection (3) of this section if  
5 vocational rehabilitation is both necessary and likely to enable the  
6 injured worker to become employable at gainful employment. Such costs  
7 may be approved before final evaluation of the worker's permanent  
8 disability, whether or not medical treatment has been concluded.

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

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

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

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

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

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

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

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

1 accommodations. The total expenditures authorized in this subsection  
2 and the expenditures authorized under RCW 51.32.250 shall not exceed  
3 five thousand dollars.

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

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

12 (~~The benefits in this section shall be provided for the~~  
13 ~~injured workers of self-insured employers.~~) Self-insurers shall  
14 (~~report both benefits provided and benefits denied under this section~~  
15 ~~in the manner prescribed by the department by rule adopted under~~  
16 ~~chapter 34.05 RCW~~) issue orders under RCW 51.52.050 providing or  
17 denying benefits under this section. If a worker timely protests an  
18 order issued by a self-insured employer under this section, the  
19 director may(~~, in his or her sole discretion and upon his or her own~~  
20 ~~initiative or at any time that a dispute arises under this section,~~)  
21 promptly make such inquiries as circumstances require (~~and~~), take  
22 such other action as he or she considers will properly determine the  
23 matter and protect the rights of the parties, and issue an order  
24 deciding whether, in the director's sole discretion, vocational  
25 rehabilitation is both necessary and likely to make the worker  
26 employable at gainful employment. If the director does not issue an  
27 order reversing or modifying a self-insured employer's order within  
28 thirty calendar days of the worker's protest, the director shall be  
29 deemed to have exercised his or her discretion and the self-insured  
30 employer's order shall be deemed affirmed.

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

35 **Sec. 33.** RCW 51.32.110 and 1997 c 325 s 3 are each amended to read  
36 as follows:

37 (1) Any worker entitled to receive any benefits or claiming such

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

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

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

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

33 (i) In the case of a worker insured by the department, the worker  
34 shall be paid compensation out of the accident fund in an amount equal  
35 to his or her usual wages for the time lost from work while attending  
36 the medical examination; or

37 (ii) In the case of a worker of a self-insurer, the self-insurer

1 shall pay the worker an amount equal to his or her usual wages for the  
2 time lost from work while attending the medical examination.

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

5 **Sec. 34.** RCW 51.32.130 and 1961 c 23 s 51.32.130 are each amended  
6 to read as follows:

7 In case of death or permanent total disability, the monthly payment  
8 provided may be converted, in whole or in part, into a lump sum  
9 payment, not in any case to exceed eight thousand five hundred dollars,  
10 equal or proportionate, as the case may be, to the value of the annuity  
11 then remaining, to be fixed and certified by the state insurance  
12 commissioner, in which event the monthly payments shall cease in whole  
13 or in part accordingly or proportionately. Such conversion may be made  
14 only upon written application (in case of minor children the  
15 application may be by either parent) to the department or self-insurer,  
16 as the case may be, and shall rest in the discretion of the department  
17 or self-insurer, as the case may be. Within the rule aforesaid the  
18 amount and value of the lump sum payment may be agreed upon between the  
19 department or self-insurer, as the case may be, and applicant. In the  
20 event any payment shall be due to an alien residing in a foreign  
21 country, the department or self-insurer, as the case may be, may settle  
22 the same by making a lump sum payment in such amount as may be agreed  
23 to by such alien, not to exceed fifty percent of the value of the  
24 annuity then remaining.

25 ~~((Nothing herein shall preclude))~~ The department ~~((from making, and  
26 authority is hereby given it to))~~ or self-insurer, as the case may be,  
27 may make, on its own motion, lump sum payments equal or proportionate,  
28 as the case may be, to the value of the annuity then remaining, in full  
29 satisfaction of claims due to dependents.

30 **Sec. 35.** RCW 51.32.150 and 1977 ex.s. c 323 s 18 are each amended  
31 to read as follows:

32 If a beneficiary ~~((shall))~~ resides or moves out of the state, the  
33 department or self-insurer, as the case may be, may, with the written  
34 consent of the beneficiary, convert any monthly payments provided for  
35 such cases into a lump sum payment (not in any case to exceed the value

1 of the annuity then remaining, to be fixed and certified by the state  
2 insurance commissioner, but in no case to exceed the sum provided in  
3 RCW 51.32.130 (~~(as now or hereafter amended)~~)).

4 **Sec. 36.** RCW 51.32.160 and 1995 c 253 s 2 are each amended to read  
5 as follows:

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

21 (b) "Closing order" as used in this section means an order based on  
22 factors which include medical recommendation, advice, (~~(or)~~)  
23 examination, or the worker abandoning the claim.

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

32 (d) If an order denying an application to reopen filed on or after  
33 July 1, 1988, is not issued within ninety days of receipt of such  
34 application by the self-insured employer or the department, as the case  
35 may be, such application shall be deemed granted. However, for good  
36 cause, the department or self-insurer, as the case may be, may extend



1 the time for making the final determination on the application for an  
2 additional sixty days.

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

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

12 **Sec. 37.** RCW 51.32.195 and 1987 c 290 s 1 are each amended to read  
13 as follows:

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

23 **Sec. 38.** RCW 51.32.210 and 1977 ex.s. c 350 s 55 are each amended  
24 to read as follows:

25 Claims of injured workers (~~of employers who have secured the~~  
26 ~~payment of compensation by insuring with the department~~) shall be  
27 promptly acted upon by the department or self-insurer, as the case may  
28 be. Where temporary disability compensation is payable, the first  
29 payment thereof shall be mailed within fourteen days after receipt of  
30 the claim at the department (~~its offices in Olympia~~) or self-insurer,  
31 as the case may be, and shall continue at regular semimonthly  
32 intervals. The payment of this or any other benefits under this title,  
33 prior to the entry of an order (~~by the department~~) in accordance with  
34 RCW 51.52.050 (~~as now or hereafter amended~~), shall be not considered  
35 a binding determination of the obligations of the department or self-  
36 insurer, as the case may be, under this title. The acceptance of

1 compensation by the worker or his or her beneficiaries prior to such  
2 order shall likewise not be considered a binding determination of their  
3 rights under this title.

4 **Sec. 39.** RCW 51.32.220 and 1982 c 63 s 19 are each amended to read  
5 as follows:

6 (1) For persons under the age of sixty-five receiving compensation  
7 for temporary or permanent total disability pursuant to the provisions  
8 of chapter 51.32 RCW, such compensation shall be reduced by an amount  
9 equal to the benefits payable under the federal old-age, survivors and  
10 disability insurance act as now or hereafter amended not to exceed the  
11 amount of the reduction established pursuant to 42 USC 424a. However,  
12 such reduction shall not apply when the combined compensation provided  
13 pursuant to chapter 51.32 RCW and the federal old-age, survivors and  
14 disability insurance act is less than the total benefits to which the  
15 federal reduction would apply, pursuant to 42 USC 424a. Where any  
16 person described in this section refuses to authorize the release of  
17 information concerning the amount of benefits payable under said  
18 federal act the department(~~(-s)~~) or self-insurer's estimate, as the  
19 case may be, of said amount shall be deemed to be correct unless and  
20 until the actual amount is established and no adjustment shall be made  
21 for any period of time covered by any such refusal.

22 (2) Any reduction under subsection (1) of this section shall be  
23 effective the month following the month in which the department or  
24 self-insurer, as the case may be, is notified by the federal social  
25 security administration that the person is receiving disability  
26 benefits under the federal old-age, survivors and disability insurance  
27 act(~~(- PROVIDED, That)~~). However, in the event of an overpayment of  
28 benefits the department or self-insurer, as the case may be, may not  
29 recover more than the overpayments for the six months immediately  
30 preceding the date the department or self-insurer notifies the worker  
31 that an overpayment has occurred(~~(- PROVIDED FURTHER, That)~~). Upon  
32 determining that there has been an overpayment, the department or self-  
33 insurer, as the case may be, shall immediately notify the person who  
34 received the overpayment that he or she shall be required to make  
35 repayment pursuant to this section and RCW 51.32.230.

36 (3) Recovery of any overpayment must be taken from future temporary  
37 or permanent total disability benefits or permanent partial disability

1 benefits provided by this title. In the case of temporary or permanent  
2 total disability benefits, the recovery shall not exceed twenty-five  
3 percent of the monthly amount due from the department or self-insurer,  
4 as the case may be, or one-sixth of the total overpayment, whichever is  
5 the lesser.

6 (4) No reduction may be made unless the worker receives notice of  
7 the reduction prior to the month in which the reduction is made.

8 (5) In no event shall the reduction reduce total benefits to less  
9 than the greater amount the worker may be entitled to under this title  
10 or the federal old-age, survivors and disability insurance act.

11 (6) The (~~director~~) department or self-insurer, as the case may  
12 be, pursuant to rules adopted in accordance with the procedures  
13 provided in the administrative procedure act, chapter 34.05 RCW, may  
14 exercise (~~his~~) discretion to waive, in whole or in part, the amount  
15 of any overpayment where the recovery would be against equity and good  
16 conscience.

17 (7) The amendment in subsection (1) of this section by chapter 63,  
18 Laws of 1982 raising the age limit during which the reduction shall be  
19 made from age sixty-two to age sixty-five shall apply with respect to  
20 workers whose effective entitlement to total disability compensation  
21 begins after January 1, 1983.

22 **Sec. 40.** RCW 51.32.225 and 1986 c 59 s 5 are each amended to read  
23 as follows:

24 (1) For persons receiving compensation for temporary or permanent  
25 total disability under this title, the compensation shall be reduced by  
26 the department or self-insurer, as the case may be, to allow an offset  
27 for social security retirement benefits payable under the federal  
28 social security, old age survivors, and disability insurance act, 42  
29 U.S.C. This reduction shall not apply to any worker who is receiving  
30 permanent total disability benefits prior to July 1, 1986.

31 (2) Reductions for social security retirement benefits under this  
32 section shall comply with the procedures in RCW 51.32.220 (1) through  
33 (6), except those that relate to computation, and with any other  
34 procedures established by the department to administer this section.

35 (3) Any reduction in compensation made under chapter 58, Laws of  
36 1986, shall be made before the reduction established in this section.

1           **Sec. 41.** RCW 51.32.230 and 1979 ex.s. c 151 s 2 are each amended  
2 to read as follows:

3           Notwithstanding any other provisions of law, any overpayments  
4 previously recovered under the provisions of RCW 51.32.220 (~~(as now or~~  
5 ~~hereafter amended)~~) shall be limited to six months' overpayments.  
6 Where greater recovery has already been made, the director(~~(, in his)~~)  
7 or the self-insurer, as the case may be, has the discretion(~~(, may)~~) to  
8 make restitution in those cases where an extraordinary hardship has  
9 been created.

10           **Sec. 42.** RCW 51.32.240 and 2001 c 146 s 10 are each amended to  
11 read as follows:

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

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

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

1 (b) The recipient may not seek an adjustment of benefits because of  
2 adjudicator error whether the payment was made by order or otherwise.  
3 "Adjudicator error" includes the failure to consider information in the  
4 claim file, failure to secure adequate information, or an error in  
5 judgment.

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

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

32 (5) Whenever any payment of benefits under this title has been  
33 induced by fraud the recipient thereof shall repay any such payment  
34 together with a penalty of fifty percent of the total of any such  
35 payments and the amount of such total sum may be recouped from any  
36 future payments due to the recipient on any claim with the state fund  
37 or self-insurer against whom the fraud was committed, as the case may

1 be, and the amount of such penalty shall be placed in the supplemental  
2 pension fund. Such repayment or recoupment must be demanded or ordered  
3 within three years of the discovery of the fraud.

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

35 The (~~director, director's designee,~~) department or self-insurer,  
36 as the case may be, may issue to any person, firm, corporation,  
37 municipal corporation, political subdivision of the state, public  
38 corporation, or agency of the state, a notice to withhold and deliver

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

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

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

1       **Sec. 43.** RCW 51.32.250 and 1988 c 161 s 10 are each amended to  
2 read as follows:

3       Modification of the injured worker's previous job or modification  
4 of a new job is recognized as a desirable method of returning the  
5 injured worker to gainful employment. In order to assist employers in  
6 meeting the costs of job modification, and to encourage employers to  
7 modify jobs to accommodate retaining or hiring workers with  
8 disabilities resulting from work-related injury, the (~~supervisor or~~  
9 ~~the supervisor's designee~~) department, in (~~his or her~~) its  
10 discretion, may pay job modification costs in an amount not to exceed  
11 five thousand dollars per worker per job modification. This payment is  
12 intended to be a cooperative participation with the employer and funds  
13 shall be taken from the appropriate account within the second injury  
14 fund.

15       The benefits provided for in this section are available to any  
16 otherwise eligible worker regardless of the date of industrial injury.

17       **Sec. 44.** RCW 51.36.010 and 1986 c 58 s 6 are each amended to read  
18 as follows:

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

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



1 not to extend beyond the date on which a lump sum settlement is made  
2 with him or her or he or she is placed upon the permanent pension  
3 roll(~~(: PROVIDED, HOWEVER, That)~~). The (~~supervisor of industrial~~  
4 ~~insurance~~) department or self-insurer, as the case may be, solely in  
5 (~~his or her~~) its discretion, may authorize continued medical and  
6 surgical treatment for conditions previously accepted (~~by the~~  
7 ~~department~~) when such medical and surgical treatment is deemed  
8 necessary by the (~~supervisor of industrial insurance~~) department or  
9 self-insurer, as the case may be, to protect such worker's life or  
10 provide for the administration of medical and therapeutic measures  
11 including payment of prescription medications, but not including those  
12 controlled substances currently scheduled by the state board of  
13 pharmacy as Schedule I, II, III, or IV substances under chapter 69.50  
14 RCW, which are necessary to alleviate continuing pain which results  
15 from the industrial injury. In order to authorize such continued  
16 treatment the written order of the (~~supervisor of industrial~~  
17 ~~insurance~~) department or self-insurer, as the case may be, issued in  
18 advance of the continuation shall be necessary.

19 The (~~supervisor of industrial insurance, the supervisor's~~  
20 ~~designee,~~) department or a self-insurer, as the case may be, in (~~his~~  
21 ~~or her~~) its sole discretion, may authorize inoculation or other  
22 immunological treatment in cases in which a work-related activity has  
23 resulted in probable exposure of the worker to a potential infectious  
24 occupational disease. Authorization of such treatment does not bind  
25 the department or self-insurer in any adjudication of a claim by the  
26 same worker or the worker's beneficiary for an occupational disease.

27 **Sec. 45.** RCW 51.36.015 and 1994 c 94 s 1 are each amended to read  
28 as follows:

29 Subject to the other provisions of this title, the health services  
30 that are available to an injured worker under RCW 51.36.010 include  
31 chiropractic care and evaluation. For the purposes of assisting the  
32 department or self-insurer in making claims determinations, an injured  
33 worker may be required by the department or self-insurer, as the case  
34 may be, to undergo examination by a chiropractor licensed under chapter  
35 18.25 RCW.

1       **Sec. 46.** RCW 51.36.020 and 1999 c 395 s 1 are each amended to read  
2 as follows:

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

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

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

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

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

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

34       (7) Whenever in the sole discretion of the (~~supervisor~~)  
35 department or self-insurer, as the case may be, it is reasonable and  
36 necessary to provide residence modifications necessary to meet the  
37 needs and requirements of the worker who has sustained catastrophic  
38 injury, the department or self-insurer may (~~be ordered to~~) pay an

1 amount not to exceed the state's average annual wage for one year as  
2 determined under RCW 50.04.355(~~(, as now existing or hereafter~~  
3 ~~amended,~~) toward the cost of such modifications or construction. Such  
4 payment shall only be made for the construction or modification of a  
5 residence in which the injured worker resides. Only one residence of  
6 any worker may be modified or constructed under this subsection,  
7 although (~~the supervisor may order~~) there may be more than one  
8 payment for any one home, up to the maximum amount permitted by this  
9 section.

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

18 (b) In the sole discretion of the (~~supervisor~~) department or  
19 self-insurer, as the case may be, after (~~his or her~~) its review, the  
20 amount paid under this subsection may be increased by no more than four  
21 thousand dollars by written order (~~of the supervisor~~).

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

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

27 Physicians examining or attending injured workers under this title  
28 shall comply with rules and regulations adopted by the director, and  
29 shall make such reports as may be requested by the department or self-  
30 insurer upon the condition or treatment of any such worker, or upon any  
31 other matters concerning such workers in their care. Except under RCW  
32 49.17.210 and 49.17.250, all medical information in the possession or  
33 control of any person and relevant to the particular injury in the  
34 opinion of the department or self-insurer pertaining to any worker  
35 whose injury or occupational disease is the basis of a claim under this  
36 title shall be made available at any stage of the proceedings to the

1 employer, the claimant's representative, and the department upon  
2 request, and no person shall incur any legal liability by reason of  
3 releasing such information.

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

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

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

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

33 (2) The department may summarily deny a request for penalties if on  
34 its face it is deemed frivolous or may require the self-insured  
35 employer to file a written, substantive response. In such event, the  
36 self-insured employer shall have twenty working days to provide

1 relevant documents to the department and respond to the request for  
2 penalties by the claimant. Failure of the department to review the  
3 request and issue an order within sixty days from the receipt of the  
4 worker's request for penalties shall result in the issuance of a  
5 default order denying the request for penalties. Any order under this  
6 section shall conform to the requirements of RCW 51.52.050.

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

9 (1) The books, records and payrolls of the employer pertinent to  
10 the administration of this title shall always be open to inspection by  
11 the department or its traveling auditor, agent or assistant, for the  
12 purpose of ascertaining the correctness of the payroll, the persons  
13 employed, and such other information as may be necessary for the  
14 department and its management under this title.

15 (2) Refusal on the part of the employer to submit his or her books,  
16 records and payrolls for such inspection to the department, or any  
17 assistant presenting written authority from the director, shall subject  
18 the offending employer to a penalty determined by the director but not  
19 to exceed two hundred fifty dollars for each offense and the individual  
20 who personally gives such refusal is guilty of a misdemeanor.

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

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

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

1       (6) The director may assess penalties against a self-insured  
2 employer as set forth in RCW 51.48.080.

3       **Sec. 51.** RCW 51.48.080 and 1985 c 347 s 7 are each amended to read  
4 as follows:

5       (1) Every person, firm or corporation who intentionally or  
6 repeatedly violates or fails to obey, observe or comply with any rule  
7 of the department ((promulgated)) adopted under authority of this  
8 title, ((shall be)) is subject to a penalty of not to exceed five  
9 hundred dollars. The department shall adopt a schedule of penalties  
10 that will take into account the severity and number of violations.

11       (2) The department may impose penalties against a self-insured  
12 employer when it determines by audit pursuant to RCW 51.48.040 that the  
13 self-insured employer has intentionally or repeatedly:

14       (a) Failed to pay its injured workers monetary benefits on a timely  
15 basis;

16       (b) Paid its injured workers monetary benefits in incorrect  
17 amounts;

18       (c) Failed to issue allowance or rejection orders on a timely  
19 basis;

20       (d) Failed to issue orders closing a claim within sixty days after  
21 the attending physician has found an injured worker to be fixed and  
22 stable and a permanent disability level has been established by a  
23 preponderance of the medical evidence.

24       (3) Self-insured employer audits discovering claims processing and  
25 clerical errors not affecting the payment of monetary benefits or  
26 violations set forth in subsection (2)(a) through (d) of this section  
27 are not subject to assessment of penalties.

28       (4) The definitions in this subsection apply throughout this  
29 section unless the context clearly requires otherwise.

30       (a) "Intentionally" means the employer or self-insured employer has  
31 acted with a conscious objective to violate, or recklessly disregard  
32 this title and rules adopted by the department.

33       (b) "Repeatedly" means the self-insured employer violates the same  
34 law or rule more than once in every three-month period, or shows a  
35 demonstrated pattern of noncompliance.

36       (c) "Incorrect amounts" means that the difference between the self-

1 insured employer's calculation of monetary benefits payable to an  
2 injured worker and the amount determined to be correct during a  
3 department audit is equal to or greater than twenty-five percent.

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

6 **Sec. 52.** RCW 51.52.050 and 1987 c 151 s 1 are each amended to read  
7 as follows:

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

31 (2) Whenever the department or self-insurer has taken any action or  
32 made any decision relating to any phase of the administration of this  
33 title the worker, beneficiary, employer, or other person aggrieved  
34 thereby may request reconsideration ((of the department)), or may  
35 appeal to the board. In an appeal before the board, the appellant  
36 shall have the burden of proceeding with the evidence to establish a  
37 prima facie case for the relief sought in such appeal(~~:- PROVIDED,~~

1 ~~That~~). However, in an appeal from an order of (~~the department~~) that  
2 alleges fraud, the department or self-insured employer shall initially  
3 introduce all evidence in its case in chief. Any such person aggrieved  
4 by the decision and order of the board may thereafter appeal to the  
5 superior court, as prescribed in this chapter.

6 (3) If the department is requested to reconsider an order issued by  
7 a self-insurer, the department must issue an order affirming,  
8 modifying, reversing, or remanding the order within sixty days of  
9 receipt of the request. The self-insurer's order shall be affirmed if  
10 it is supported by substantial evidence in the claim file. If the  
11 department fails to issue an order within sixty days, the self-  
12 insurer's order is deemed affirmed, subject to appeal. Upon receipt of  
13 a request for reconsideration, the department shall notify all parties  
14 of the date the department received the request and the date upon which  
15 the self-insurer's order will be deemed affirmed if the department  
16 fails to take action. The notice shall also inform the parties that  
17 any appeal pursuant to RCW 51.52.060 must be filed within sixty days  
18 from the date the order is deemed affirmed. If such appeal is filed,  
19 the department may not direct submission of further evidence under RCW  
20 51.52.060.

21 **Sec. 53.** RCW 51.52.060 and 1995 c 253 s 1 and 1995 c 199 s 7 are  
22 each reenacted and amended to read as follows:

23 (1)(a) Except as otherwise specifically provided in this section,  
24 a worker, beneficiary, employer, health services provider, or other  
25 person aggrieved by an order, decision, or award of the department or  
26 self-insurer must, before he or she appeals to the courts, file with  
27 the board and the director, by mail or personally, and in cases  
28 involving a self-insurer, with the self-insurer, within sixty days from  
29 the day on which a copy of the order, decision, or award was  
30 communicated to such person, a notice of appeal to the board. However,  
31 a health services provider or other person aggrieved by a department  
32 order or decision making demand, whether with or without penalty,  
33 solely for repayment of sums paid to a provider of medical, dental,  
34 vocational, or other health services rendered to an industrially  
35 injured worker must, before he or she appeals to the courts, file with  
36 the board and the director, by mail or personally, within twenty days



1 from the day on which a copy of the order or decision was communicated  
2 to the health services provider upon whom the department order or  
3 decision was served, a notice of appeal to the board.

4 (b) Failure to file a notice of appeal with ~~((both))~~ the board  
5 ~~((and)),~~ the department, and the self-insurer, if applicable, shall not  
6 be grounds for denying the appeal if the notice of appeal is filed with  
7 ~~((either))~~ the board ~~((or)),~~ the department, or the self-insurer. If  
8 the notice of appeal does not demonstrate, on its face, that it was  
9 sent to the department, the board, and the self-insurer, if applicable,  
10 the recipient shall forward a copy of the notice to the other parties  
11 not served.

12 (2) Within ten days of the date on which an appeal has been granted  
13 by the board, the board shall notify the other interested parties to  
14 the appeal of the receipt of the appeal and shall forward a copy of the  
15 notice of appeal to the other interested parties. Within twenty days  
16 of the receipt of such notice of the board, the worker or the employer  
17 may file with the board a cross-appeal from the order ~~((of the~~  
18 ~~department))~~ from which the original appeal was taken.

19 (3) If within the time limited for filing a notice of appeal to the  
20 board from an order, decision, or award ~~((of the department))~~, the  
21 department directs the submission of further evidence or the  
22 investigation of any further fact, the time for filing the notice of  
23 appeal shall not commence to run until the person has been advised in  
24 writing of the final decision of the department in the matter. In the  
25 event the department directs the submission of further evidence or the  
26 investigation of any further fact, as provided in this section, the  
27 department shall render a final order, decision, or award within ninety  
28 days from the date further submission of evidence or investigation of  
29 further fact is ordered which time period may be extended by the  
30 department for good cause stated in writing to all interested parties  
31 for an additional ninety days.

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

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

35 (b)(i) Except as provided in (b)(ii) of this subsection, hold an  
36 order, decision, or award in abeyance for a period of ninety days which  
37 time period may be extended by the department for good cause stated in

1 writing to all interested parties for an additional ninety days pending  
2 further investigation in light of the allegations of the notice of  
3 appeal; or

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

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

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

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

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

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

25 **Sec. 54.** RCW 51.52.070 and 1977 ex.s. c 350 s 77 are each amended  
26 to read as follows:

27 The notice of appeal to the board shall set forth in full detail  
28 the grounds upon which the person appealing considers such order,  
29 decision, or award is unjust or unlawful, and shall include every issue  
30 to be considered by the board, and it must contain a detailed statement  
31 of facts upon which such worker, beneficiary, employer, or other person  
32 relies in support thereof. The worker, beneficiary, employer, or other  
33 person shall be deemed to have waived all objections or irregularities  
34 concerning the matter on which such appeal is taken other than those  
35 specifically set forth in such notice of appeal or appearing in the  
36 records of the department or self-insurer. The department or self-

1 insurer shall promptly transmit its original record, or a legible copy  
2 thereof produced by mechanical, photographic, or electronic means, in  
3 such matter to the board.

4 **Sec. 55.** RCW 51.52.080 and 1971 ex.s. c 289 s 69 are each amended  
5 to read as follows:

6 If the notice of appeal raises no issue or issues of fact and the  
7 board finds that the department or self-insurer properly and lawfully  
8 decided all matters raised by such appeal it may, without further  
9 hearing, deny the same and confirm the ((~~department's~~)) decision or  
10 award, or if the ((~~department's~~)) record sustains the contention of the  
11 person appealing to the board, it may, without further hearing, allow  
12 the relief asked in such appeal; otherwise, it shall grant the appeal.

13 NEW SECTION. **Sec. 56.** A new section is added to chapter 51.14 RCW  
14 to read as follows:

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

18 NEW SECTION. **Sec. 57.** RCW 51.32.190 (Self-insurers--Notice of  
19 denial of claim, reasons--Procedure--Powers and duties of director) and  
20 1996 c 58 s 2, 1982 1st ex.s. c 20 s 3, 1977 ex.s. c 350 s 54, 1972  
21 ex.s. c 43 s 25, & 1971 ex.s. c 289 s 47 are each repealed.

22 NEW SECTION. **Sec. 58.** This act takes effect January 1, 2005.

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