
HOUSE BILL 3058

State of Washington

58th Legislature

2004 Regular Session

By Representatives McCoy, Conway, Wood, Hudgins, Kenney and Chase; by request of Department of Labor & Industries

Read first time 01/27/2004. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to industrial insurance benefits induced by fraud;
2 amending RCW 51.32.240; and creating a new section.

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

4 **Sec. 1.** RCW 51.32.240 and 2001 c 146 s 10 are each amended to read
5 as follows:

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

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

3 (2) Whenever the department or self-insurer fails to pay benefits
4 because of clerical error, mistake of identity, or innocent
5 misrepresentation, all not induced by recipient fraud, the recipient
6 may request an adjustment of benefits to be paid from the state fund or
7 by the self-insurer, as the case may be, subject to the following:

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

11 (b) The recipient may not seek an adjustment of benefits because of
12 adjudicator error. "Adjudicator error" includes the failure to
13 consider information in the claim file, failure to secure adequate
14 information, or an error in judgment.

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

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

1 (5)(a) Whenever any payment of benefits under this title has been
2 induced by fraud the recipient thereof shall repay any such payment
3 together with a penalty of fifty percent of the total of any such
4 payments and the amount of such total sum may be recouped from any
5 future payments due to the recipient on any claim with the state fund
6 or self-insurer against whom the fraud was committed, as the case may
7 be, and the amount of such penalty shall be placed in the supplemental
8 pension fund. Such repayment or recoupment must be demanded or ordered
9 within three years of the discovery of the fraud.

10 (b) For purposes of this subsection (5), it is fraud for a person
11 to obtain payments or other benefits under this chapter in an amount
12 greater than that to which the person otherwise would be entitled by
13 means of:

14 (i) Willful false statement;

15 (ii) Willful misrepresentation or concealment of any material fact;

16 or

17 (iii) Other willful deceptive scheme or device.

18 (c) For purposes of this subsection (5), a material fact is one
19 which would affect the department's or self-insured employer's
20 determination of entitlement to benefits, including but not limited to
21 facts about physical restrictions, ability to work, activities which
22 result in wages or produce income, or activities which would reasonably
23 be expected to result in wages or produce income if performed by a
24 compensated worker. For those activities that would reasonably be
25 expected to result in wages or produce income, but for which actual
26 wage or income information cannot be reasonably determined, the
27 department shall impute wages pursuant to RCW 51.08.178(4).

28 (d) The department may adopt rules to implement this section.

29 (6) The worker, beneficiary, or other person affected thereby shall
30 have the right to contest an order assessing an overpayment pursuant to
31 this section in the same manner and to the same extent as provided
32 under RCW 51.52.050 and 51.52.060. In the event such an order becomes
33 final under chapter 51.52 RCW and notwithstanding the provisions of
34 subsections (1) through (5) of this section, the director, director's
35 designee, or self-insurer may file with the clerk in any county within
36 the state a warrant in the amount of the sum representing the unpaid
37 overpayment and/or penalty plus interest accruing from the date the
38 order became final. The clerk of the county in which the warrant is

1 filed shall immediately designate a superior court cause number for
2 such warrant and the clerk shall cause to be entered in the judgment
3 docket under the superior court cause number assigned to the warrant,
4 the name of the worker, beneficiary, or other person mentioned in the
5 warrant, the amount of the unpaid overpayment and/or penalty plus
6 interest accrued, and the date the warrant was filed. The amount of
7 the warrant as docketed shall become a lien upon the title to and
8 interest in all real and personal property of the worker, beneficiary,
9 or other person against whom the warrant is issued, the same as a
10 judgment in a civil case docketed in the office of such clerk. The
11 sheriff shall then proceed in the same manner and with like effect as
12 prescribed by law with respect to execution or other process issued
13 against rights or property upon judgment in the superior court. Such
14 warrant so docketed shall be sufficient to support the issuance of
15 writs of garnishment in favor of the department or self-insurer in the
16 manner provided by law in the case of judgment, wholly or partially
17 unsatisfied. The clerk of the court shall be entitled to a filing fee
18 under RCW 36.18.012(10), which shall be added to the amount of the
19 warrant. A copy of such warrant shall be mailed to the worker,
20 beneficiary, or other person within three days of filing with the
21 clerk.

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

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

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

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

24 NEW SECTION. **Sec. 2.** This act applies to fraud determinations
25 issued on or after July 1, 2004.

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