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ENGROSSED SUBSTITUTE HOUSE BILL 3188

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State of Washington

58th Legislature

2004 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Conway and Wood)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to liability to the department of labor and  
2 industries for premiums, overpayments, and penalties; amending RCW  
3 51.08.177, 51.12.070, 51.36.110, 51.32.240, and 51.52.050; adding new  
4 sections to chapter 51.48 RCW; adding a new section to chapter 51.16  
5 RCW; and creating new sections.

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

7 **Sec. 1.** RCW 51.08.177 and 1986 c 9 s 3 are each amended to read as  
8 follows:

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

15 **Sec. 2.** RCW 51.12.070 and 1981 c 128 s 4 are each amended to read  
16 as follows:

17 The provisions of this title ((shall)) apply to all work done by  
18 contract; the person, firm, or corporation who lets a contract for such

1 work (~~shall be~~) is responsible primarily and directly for all  
2 premiums upon the work. The contractor and any subcontractor (~~shall~~  
3 ~~be~~) are subject to the provisions of this title and the person, firm,  
4 or corporation letting the contract (~~shall be~~) is entitled to collect  
5 from the contractor the full amount payable in premiums and the  
6 contractor in turn (~~shall be~~) is entitled to collect from the  
7 subcontractor his or her proportionate amount of the payment.

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

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

14 (2) The subcontractor has a principal place of business which would  
15 be eligible for a business deduction for internal revenue service tax  
16 purposes other than that furnished by the contractor for which the  
17 business has contracted to furnish services;

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

20 (4) The subcontractor has contracted to perform:

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

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

26 (5) The subcontractor has an industrial insurance account in good  
27 standing with the department or is a self-insurer. For the purposes of  
28 this subsection, a contractor may consider a subcontractor's account to  
29 be in good standing if, within a year prior to letting the contract or  
30 master service agreement, and at least once a year thereafter, the  
31 contractor has verified with the department that the account is in good  
32 standing and the contractor has not received written notice from the  
33 department that the subcontractor's account status has changed.  
34 Acceptable documentation of verification includes a department document  
35 which includes an issued date or a dated printout of information from  
36 the department's internet web site showing a subcontractor's good  
37 standing. The department shall develop an approach to provide

1 contractors with verification of the date of inquiries validating that  
2 the subcontractor's account is in good standing.

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

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

10 (1) Upon termination, dissolution, or abandonment of a corporate or  
11 limited liability company business, any officer, member, manager, or  
12 other person having control or supervision of payment and/or reporting  
13 of industrial insurance, or who is charged with the responsibility for  
14 the filing of returns, is personally liable for any unpaid premiums and  
15 interest and penalties on those premiums if such officer or other  
16 person willfully fails to pay or to cause to be paid any premiums due  
17 the department under chapter 51.16 RCW.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (1) Conduct audits and investigations of providers of medical,  
20 chiropractic, dental, vocational, and other health services furnished  
21 to industrially injured workers pursuant to Title 51 RCW. In the  
22 conduct of such audits or investigations, the director or the  
23 director's authorized representatives may examine all records, or  
24 portions thereof, including patient records, for which services were  
25 rendered by a health services provider and reimbursed by the  
26 department, notwithstanding the provisions of any other statute which  
27 may make or purport to make such records privileged or confidential:  
28 PROVIDED, That no original patient records shall be removed from the  
29 premises of the health services provider, and that the disclosure of  
30 any records or information obtained under authority of this section by  
31 the department of labor and industries is prohibited and constitutes a  
32 violation of RCW 42.52.050, unless such disclosure is directly  
33 connected to the official duties of the department: AND PROVIDED  
34 FURTHER, That the disclosure of patient information as required under  
35 this section shall not subject any physician or other health services

1 provider to any liability for breach of any confidential relationships  
2 between the provider and the patient: AND PROVIDED FURTHER, That the  
3 director or the director's authorized representative shall destroy all  
4 copies of patient medical records in their possession upon completion  
5 of the audit, investigation, or proceedings;

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

9 (3) Terminate or suspend eligibility to participate as a provider  
10 of services furnished to industrially injured workers pursuant to Title  
11 51 RCW; and

12 (4) Pursue collection of unpaid overpayments and/or penalties plus  
13 interest accrued from health care providers pursuant to RCW  
14 51.32.240(6).

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

17 (1)(a) Whenever any payment of benefits under this title is made  
18 because of clerical error, mistake of identity, innocent  
19 misrepresentation by or on behalf of the recipient thereof mistakenly  
20 acted upon, or any other circumstance of a similar nature, all not  
21 induced by (~~fraud~~) willful misrepresentation, the recipient thereof  
22 shall repay it and recoupment may be made from any future payments due  
23 to the recipient on any claim with the state fund or self-insurer, as  
24 the case may be. The department or self-insurer, as the case may be,  
25 must make claim for such repayment or recoupment within one year of the  
26 making of any such payment or it will be deemed any claim therefor has  
27 been waived.

28 (b) Except as provided in subsections (3), (4), and (5) of this  
29 section, the department may only assess an overpayment of benefits  
30 because of adjudicator error when the order upon which the overpayment  
31 is based is not yet final as provided in RCW 51.52.050 and 51.52.060.  
32 "Adjudicator error" includes the failure to consider information in the  
33 claim file, failure to secure adequate information, or an error in  
34 judgment.

35 (c) The director, pursuant to rules adopted in accordance with the  
36 procedures provided in the administrative procedure act, chapter 34.05

1 RCW, may exercise his discretion to waive, in whole or in part, the  
2 amount of any such timely claim where the recovery would be against  
3 equity and good conscience.

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

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

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

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

33 (4) Whenever any payment of benefits under this title has been made  
34 pursuant to an adjudication by the department or by order of the board  
35 or any court and timely appeal therefrom has been made where the final  
36 decision is that any such payment was made pursuant to an erroneous  
37 adjudication, the recipient thereof shall repay it and recoupment may  
38 be made from any future payments due to the recipient on any claim with

1 the state fund or self-insurer, as the case may be. The director,  
2 pursuant to rules adopted in accordance with the procedures provided in  
3 the administrative procedure act, chapter 34.05 RCW, may exercise his  
4 discretion to waive, in whole or in part, the amount of any such  
5 payments where the recovery would be against equity and good  
6 conscience.

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

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

21 (i) Willful false statement; or

22 (ii) Willful misrepresentation, omission, or concealment of any  
23 material fact.

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

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

31 (e) For purposes of this subsection (5), a material fact is one  
32 which would result in additional, increased, or continued benefits,  
33 including but not limited to facts about physical restrictions, or  
34 work-type activities which either result in wages or income or would be  
35 reasonably expected to do so. Wages or income include the receipt of  
36 any goods or services. For a work-type activity to be reasonably  
37 expected to result in wages or income, a pattern of repeated activity  
38 must exist. For those activities that would reasonably be expected to

1 result in wages or produce income, but for which actual wage or income  
2 information cannot be reasonably determined, the department shall  
3 impute wages pursuant to RCW 51.08.178(4).

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

35 The director, director's designee, or self-insurer may issue to any  
36 person, firm, corporation, municipal corporation, political subdivision  
37 of the state, public corporation, or agency of the state, a notice to  
38 withhold and deliver property of any kind if there is reason to believe



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

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

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

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

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

24       Whenever the department has taken any action or made any decision  
25 relating to any phase of the administration of this title the worker,  
26 beneficiary, employer, or other person aggrieved thereby may request  
27 reconsideration of the department, or may appeal to the board. In an  
28 appeal before the board, the appellant shall have the burden of  
29 proceeding with the evidence to establish a prima facie case for the  
30 relief sought in such appeal: PROVIDED, That in an appeal from an  
31 order of the department that alleges (~~fraud~~) willful  
32 misrepresentation, the department or self-insured employer shall  
33 initially introduce all evidence in its case in chief. Any such person  
34 aggrieved by the decision and order of the board may thereafter appeal  
35 to the superior court, as prescribed in this chapter.

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

1        NEW SECTION.   **Sec. 10.**   The department shall adopt rules to  
2   implement this act.

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