
HOUSE BILL 3188

State of Washington 58th Legislature 2004 Regular Session

By Representatives Conway and Wood

Read first time 02/05/2004. Referred to Committee on Commerce & Labor.

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, and 51.32.240; adding a new section to
4 chapter 51.48 RCW; and creating a new section.

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

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

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

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

16 The provisions of this title ((shall)) apply to all work done by
17 contract; the person, firm, or corporation who lets a contract for such
18 work ((shall-be)) is responsible primarily and directly for all

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

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

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

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

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

19 (4) The subcontractor has contracted to perform:

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

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

25 (5) The subcontractor, if an employer, has an industrial insurance
26 account in good standing with the department when the contract is let.

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

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

34 (1) Upon termination, dissolution, or abandonment of a corporate or
35 limited liability company business, any officer, member, manager, or
36 other person having control or supervision of payment and/or reporting
37 of industrial insurance, or who is charged with the responsibility for

1 the filing of returns, is personally liable for any unpaid premiums and
2 interest and penalties on those premiums if such officer or other
3 person willfully fails to pay or to cause to be paid any premiums due
4 the department under chapter 51.16 RCW.

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

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

13 (3) Any person having been issued a notice of assessment under this
14 section is entitled to the appeal procedures under RCW 51.48.131.

15 (4) This section does not relieve the corporation or limited
16 liability company of other tax liabilities or otherwise impair other
17 tax collection remedies afforded by law.

18 (5) Collection authority and procedures prescribed in this chapter
19 apply to collections under this section.

20 **Sec. 4.** RCW 51.36.110 and 1994 c 154 s 312 are each amended to
21 read as follows:

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

24 (1) Conduct audits and investigations of providers of medical,
25 chiropractic, dental, vocational, and other health services furnished
26 to industrially injured workers pursuant to Title 51 RCW. In the
27 conduct of such audits or investigations, the director or the
28 director's authorized representatives may examine all records, or
29 portions thereof, including patient records, for which services were
30 rendered by a health services provider and reimbursed by the
31 department, notwithstanding the provisions of any other statute which
32 may make or purport to make such records privileged or confidential:
33 PROVIDED, That no original patient records shall be removed from the
34 premises of the health services provider, and that the disclosure of
35 any records or information obtained under authority of this section by
36 the department of labor and industries is prohibited and constitutes a
37 violation of RCW 42.52.050, unless such disclosure is directly

1 connected to the official duties of the department: AND PROVIDED
2 FURTHER, That the disclosure of patient information as required under
3 this section shall not subject any physician or other health services
4 provider to any liability for breach of any confidential relationships
5 between the provider and the patient: AND PROVIDED FURTHER, That the
6 director or the director's authorized representative shall destroy all
7 copies of patient medical records in their possession upon completion
8 of the audit, investigation, or proceedings;

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

12 (3) Terminate or suspend eligibility to participate as a provider
13 of services furnished to industrially injured workers pursuant to Title
14 51 RCW; and

15 (4) Pursue collection of unpaid overpayments and/or penalties plus
16 interest accrued from health care providers pursuant to RCW
17 51.32.240(6).

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

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

35 (2) Whenever the department or self-insurer fails to pay benefits
36 because of clerical error, mistake of identity, or innocent

1 misrepresentation, all not induced by recipient fraud, the recipient
2 may request an adjustment of benefits to be paid from the state fund or
3 by the self-insurer, as the case may be, subject to the following:

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

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

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

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

35 (5)(a) Whenever any payment of benefits under this title has been
36 induced by fraud the recipient thereof shall repay any such payment
37 together with a penalty of fifty percent of the total of any such
38 payments and the amount of such total sum may be recouped from any

1 future payments due to the recipient on any claim with the state fund
2 or self-insurer against whom the fraud was committed, as the case may
3 be, and the amount of such penalty shall be placed in the supplemental
4 pension fund. Such repayment or recoupment must be demanded or ordered
5 within three years of the discovery of the fraud.

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

10 (i) Willful false statement;

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

12 or

13 (iii) Other willful deceptive scheme or device.

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

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

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

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

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

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

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

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

20 NEW SECTION. **Sec. 6.** Section 5 of this act applies to fraud
21 determinations issued on or after July 1, 2004.

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