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**SUBSTITUTE HOUSE BILL 1732**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** House Committee on Commerce & Labor (originally sponsored by Representatives Conway, McCoy, Wood, Chase, Campbell and Santos)

READ FIRST TIME 03/03/05.

1       AN ACT Relating to allowing additional industrial insurance  
2 benefits when social security benefits are reduced; and amending RCW  
3 51.32.220.

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

5       **Sec. 1.** RCW 51.32.220 and 2004 c 92 s 1 are each amended to read  
6 as follows:

7       (1) For persons receiving compensation for temporary or permanent  
8 total disability pursuant to the provisions of this chapter, such  
9 compensation shall be reduced by an amount equal to the benefits  
10 payable under the federal old-age, survivors, and disability insurance  
11 act as now or hereafter amended not to exceed the amount of the  
12 reduction established pursuant to 42 U.S.C. Sec. 424a. However, such  
13 reduction shall not apply when the combined compensation provided  
14 pursuant to this chapter and the federal old-age, survivors, and  
15 disability insurance act is less than the total benefits to which the  
16 federal reduction would apply, pursuant to 42 U.S.C. 424a. Where any  
17 person described in this section refuses to authorize the release of  
18 information concerning the amount of benefits payable under said  
19 federal act the department's estimate of said amount shall be deemed to

1 be correct unless and until the actual amount is established and no  
2 adjustment shall be made for any period of time covered by any such  
3 refusal.

4 (2) Any reduction under subsection (1) of this section shall be  
5 effective the month following the month in which the department or  
6 self-insurer is notified by the federal social security administration  
7 that the person is receiving disability benefits under the federal old-  
8 age, survivors, and disability insurance act: PROVIDED, That in the  
9 event of an overpayment of benefits the department or self-insurer may  
10 not recover more than the overpayments for the six months immediately  
11 preceding the date the department or self-insurer notifies the worker  
12 that an overpayment has occurred: PROVIDED FURTHER, That upon  
13 determining that there has been an overpayment, the department or self-  
14 insurer shall immediately notify the person who received the  
15 overpayment that he or she shall be required to make repayment pursuant  
16 to this section and RCW 51.32.230.

17 (3) Recovery of any overpayment must be taken from future temporary  
18 or permanent total disability benefits or permanent partial disability  
19 benefits provided by this title. In the case of temporary or permanent  
20 total disability benefits, the recovery shall not exceed twenty-five  
21 percent of the monthly amount due from the department or self-insurer  
22 or one-sixth of the total overpayment, whichever is the lesser.

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

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

28 (6) The director, pursuant to rules adopted in accordance with the  
29 procedures provided in the administrative procedure act, chapter 34.05  
30 RCW, may exercise his or her discretion to waive, in whole or in part,  
31 the amount of any overpayment where the recovery would be against  
32 equity and good conscience.

33 (7) Subsection (1) of this section applies to:

34 (a) Workers under the age of sixty-two whose effective entitlement  
35 to total disability compensation begins before January 2, 1983;

36 (b) Workers under the age of sixty-five whose effective entitlement  
37 to total disability compensation begins after January 1, 1983; and

1 (c) Workers who will become sixty-five years of age on or after  
2 June 10, 2004.

3 (8)(a) If the federal social security administration makes a  
4 retroactive reduction in the federal social security disability benefit  
5 entitlement of a worker for periods of temporary total, temporary  
6 partial, or total permanent disability for which the department or  
7 self-insurer also reduced the worker's benefit amounts under this  
8 section, the department or self-insurer, as the case may be, shall make  
9 adjustments in the calculation of benefits and pay the additional  
10 benefits to the worker as appropriate. However, the department or  
11 self-insurer shall not make changes in the calculation or pay  
12 additional benefits unless the worker submits a written request, along  
13 with documentation satisfactory to the director of an overpayment  
14 assessment by the social security administration, to the department or  
15 self-insurer, as the case may be.

16 (b) Additional benefits paid under this subsection:

17 (i) Are paid without interest and without regard to whether the  
18 worker's claim under this title is closed; and

19 (ii) Do not affect the status or the date of the claim's closure.

20 (c) This subsection applies only to requests for adjustments that  
21 are submitted before July 1, 2007, and does not apply to requests on  
22 claims for which a determination on the request has been made and is  
23 not subject to further appeal.

24 (d) By December 1, 2006, the department must report to the  
25 appropriate committees of the legislature concerning the benefit  
26 adjustments authorized in this subsection and must include information  
27 about similar benefit adjustments, if any, authorized in other states  
28 with social security disability benefit offset requirements. The  
29 report must include recommendations on whether additional statutory  
30 changes might be warranted in light of the actions of the federal  
31 social security administration.

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