
SENATE BILL 5789

State of Washington 59th Legislature 2005 Regular Session

By Senators Prentice and Parlette

Read first time 02/07/2005. Referred to Committee on Labor,
Commerce, Research & Development.

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, 51.04.030, 51.04.040, 51.04.085,
4 51.08.040, 51.08.173, 51.14.110, 51.14.120, 51.14.130, 51.16.120,
5 51.24.030, 51.24.050, 51.24.060, 51.24.070, 51.24.080, 51.24.090,
6 51.28.010, 51.28.010, 51.28.020, 51.28.020, 51.28.030, 51.28.030,
7 51.28.040, 51.28.055, 51.28.055, 51.28.060, 51.28.070, 51.32.010,
8 51.32.040, 51.32.055, 51.32.055, 51.32.060, 51.32.080, 51.32.095,
9 51.32.095, 51.32.110, 51.32.160, 51.32.195, 51.32.210, 51.32.240,
10 51.36.010, 51.36.010, 51.36.015, 51.36.020, 51.36.060, 51.36.060,
11 51.36.070, 51.48.017, 51.48.040, 51.48.040, 51.48.080, 51.52.050,
12 51.52.070, and 51.52.080; reenacting and amending RCW 51.52.060; adding
13 a new section to chapter 51.14 RCW; creating a new section; repealing
14 RCW 51.32.190; prescribing penalties; providing effective dates; and
15 providing expiration dates.

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

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

19 (1) The director shall:

1 ~~((1))~~ (a) Establish and adopt rules governing the administration
2 of this title and the auditing of self-insured employers under RCW
3 51.48.040 (4) and (5);

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

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

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

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

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

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

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

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

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

31 (2) Self-insured employers shall be vested with the powers and
32 duties necessary to adjudicate all aspects of industrial injury or
33 occupational disease claims of their injured workers without prior
34 approval or consent of the department subject to the provisions of this
35 title. Orders issued by self-insured employers shall conform with the
36 requirements contained in RCW 51.52.050. A self-insurer's order
37 determining that a worker shall be placed on the pension rolls as a

1 permanent totally disabled worker shall not make any factual findings
2 beyond eligibility for the pension rolls and the effective date of such
3 eligibility.

4 (3) If a worker or beneficiary requests reconsideration or appeals
5 a self-insurer order, the department may review the order under RCW
6 51.52.050, or may direct submission of further evidence under RCW
7 51.52.050 and 51.52.060. A subsequent order issued by the department
8 may be appealed by any aggrieved party.

9 **Sec. 2.** RCW 51.04.030 and 2004 c 65 s 1 are each amended to read
10 as follows:

11 (1) The director shall supervise the providing of prompt and
12 efficient care and treatment, including care provided by physician
13 assistants governed by the provisions of chapters 18.57A and 18.71A
14 RCW, acting under a supervising physician, including chiropractic care,
15 and including care provided by licensed advanced registered nurse
16 practitioners, to workers injured during the course of their employment
17 at the least cost consistent with promptness and efficiency, without
18 discrimination or favoritism, and with as great uniformity as the
19 various and diverse surrounding circumstances and locations of
20 industries will permit and to that end shall, from time to time,
21 establish and adopt and supervise the administration of printed forms,
22 rules, (~~regulations,~~) and practices for the furnishing of such care
23 and treatment(~~(:—PROVIDED, That)~~). However, the medical coverage
24 decisions of the department do not constitute a "rule" as used in RCW
25 34.05.010(16), nor are such decisions subject to the rule-making
26 provisions of chapter 34.05 RCW except that criteria for establishing
27 medical coverage decisions shall be adopted by rule after consultation
28 with the workers' compensation advisory committee established in RCW
29 51.04.110(~~(:—PROVIDED FURTHER, That)~~). The department or self-
30 insurer, as the case may be, may recommend to an injured worker
31 particular health care services and providers where specialized
32 treatment is indicated or where cost-effective payment levels or rates
33 are obtained by the department(~~(:—AND PROVIDED FURTHER, That)~~) or
34 self-insurer. The department may enter into contracts for goods and
35 services including, but not limited to, durable medical equipment so
36 long as statewide access to quality service is maintained for injured
37 workers.

1 (2) The director shall, in consultation with interested persons,
2 establish and, in his or her discretion, periodically change as may be
3 necessary, and make available a fee schedule of the maximum charges to
4 be made by any physician, surgeon, chiropractor, hospital, druggist,
5 licensed advanced registered nurse practitioner, physicians' assistants
6 as defined in chapters 18.57A and 18.71A RCW, acting under a
7 supervising physician or other agency or person rendering services to
8 injured workers. The department shall coordinate with other state
9 purchasers of health care services to establish as much consistency and
10 uniformity in billing and coding practices as possible, taking into
11 account the unique requirements and differences between programs. No
12 service covered under this title, including services provided to
13 injured workers, whether aliens or other injured workers, who are not
14 residing in the United States at the time of receiving the services,
15 shall be charged or paid at a rate or rates exceeding those specified
16 in such fee schedule, and no contract providing for greater fees shall
17 be valid as to the excess. The establishment of such a schedule,
18 exclusive of conversion factors, does not constitute "agency action" as
19 used in RCW 34.05.010(3), nor does such a fee schedule constitute a
20 "rule" as used in RCW 34.05.010(16).

21 (3) The director or self-insurer, as the case may be, shall make a
22 record of the commencement of every disability and the termination
23 thereof and, when bills are rendered for the care and treatment of
24 injured workers, shall approve and pay those which conform to the
25 adopted rules, (~~((regulations_))~~) established fee schedules, and
26 practices of the director and may reject any bill or item thereof
27 incurred in violation of the principles laid down in this section or
28 the rules, (~~((regulations_))~~) or the established fee schedules and rules
29 (~~((and regulations))~~) adopted under it.

30 **Sec. 3.** RCW 51.04.030 and 1998 c 230 s 1 are each amended to read
31 as follows:

32 (1) The director shall supervise the providing of prompt and
33 efficient care and treatment, including care provided by physician
34 assistants governed by the provisions of chapters 18.57A and 18.71A
35 RCW, acting under a supervising physician, and including chiropractic
36 care, to workers injured during the course of their employment at the
37 least cost consistent with promptness and efficiency, without

1 discrimination or favoritism, and with as great uniformity as the
2 various and diverse surrounding circumstances and locations of
3 industries will permit and to that end shall, from time to time,
4 establish and adopt and supervise the administration of printed forms,
5 rules, (~~regulations,~~) and practices for the furnishing of such care
6 and treatment(~~(:—PROVIDED, That)~~). However, the medical coverage
7 decisions of the department do not constitute a "rule" as used in RCW
8 34.05.010(16), nor are such decisions subject to the rule-making
9 provisions of chapter 34.05 RCW except that criteria for establishing
10 medical coverage decisions shall be adopted by rule after consultation
11 with the workers' compensation advisory committee established in RCW
12 51.04.110(~~(:—PROVIDED FURTHER, That)~~). The department or self-
13 insurer, as the case may be, may recommend to an injured worker
14 particular health care services and providers where specialized
15 treatment is indicated or where cost-effective payment levels or rates
16 are obtained by the department(~~(:—AND PROVIDED FURTHER, That)~~) or
17 self-insurer. The department may enter into contracts for goods and
18 services including, but not limited to, durable medical equipment so
19 long as statewide access to quality service is maintained for injured
20 workers.

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

1 not constitute "agency action" as used in RCW 34.05.010(3), nor does
2 such a fee schedule constitute a "rule" as used in RCW 34.05.010(16).

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

12 **Sec. 4.** RCW 51.04.040 and 1987 c 316 s 1 are each amended to read
13 as follows:

14 The director and (~~his or her~~) the director's authorized
15 assistants shall have power to issue subpoenas to enforce the
16 attendance and testimony of witnesses and the production and
17 examination of books, papers, photographs, tapes, and records before
18 the department or a self-insurer in connection with any claim made to
19 the department or a self-insurer, any billing submitted to the
20 department or a self-insurer, or the assessment or collection of
21 premiums. The director shall issue a subpoena on behalf of a self-
22 insurer upon application demonstrating a reasonable basis for the
23 issuance of a subpoena. The superior court shall have the power to
24 enforce any such subpoena by proper proceedings.

25 **Sec. 5.** RCW 51.04.085 and 1977 ex.s. c 323 s 26 are each amended
26 to read as follows:

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

32 **Sec. 6.** RCW 51.08.040 and 1961 c 23 s 51.08.040 are each amended
33 to read as follows:

34 For purposes of this title, "department" means the department of

1 labor and industries, its director, and its director's appointees and
2 employees.

3 **Sec. 7.** 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.

8 **Sec. 8.** RCW 51.14.110 and 1971 ex.s. c 289 s 35 are each amended
9 to read as follows:

10 Every self-insurer shall maintain a record of all payments of
11 compensation made under this title. In the event of an audit by the
12 department, the self-insurer shall furnish to the ((director))
13 department all information ((he)) it has in ((his)) its possession ((as
14 to any disputed claim)), upon forms approved by the ((director))
15 department, within twenty days of receipt of a written request from the
16 department. Every self-insurer shall monthly report to the department,
17 in a format approved by the department, all claims filed or closed
18 during the previous month, and any such information necessary to
19 conduct the audits of self-insured employers.

20 **Sec. 9.** RCW 51.14.120 and 2001 c 152 s 1 are each amended to read
21 as follows:

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

1 claim file unless the request is for only a particular portion of the
2 file. Any new material added to the claim file after the initial
3 request shall be provided under the same terms and conditions as the
4 initial request.

5 (2) The self-insurer shall transmit notice to the department of any
6 protest or appeal by an employee relating to the administration of an
7 industrial injury or occupational disease claim under this chapter
8 within five working days of receipt. The date that the protest or
9 appeal is received by the self-insurer shall be deemed to be the date
10 the protest is received by the department for the purpose of RCW
11 51.52.050.

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

14 **Sec. 10.** RCW 51.14.130 and 1993 c 122 s 3 are each amended to read
15 as follows:

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

23 **Sec. 11.** RCW 51.16.120 and 2004 c 258 s 1 are each amended to read
24 as follows:

25 (1) Whenever a worker has a previous bodily disability from any
26 previous injury or disease, whether known or unknown to the employer,
27 and shall suffer a further disability from injury or occupational
28 disease in employment covered by this title and become totally and
29 permanently disabled from the combined effects thereof or die when
30 death was substantially accelerated by the combined effects thereof,
31 then the experience record of an employer insured with the state fund
32 at the time of said further injury or disease shall be charged and a
33 self-insured employer shall pay directly into the reserve fund only the
34 accident cost which would have resulted solely from said further injury
35 or disease, had there been no preexisting disability, and which
36 accident cost shall be based upon an evaluation of the disability by

1 medical experts. The difference between the charge thus assessed to
2 such employer at the time of said further injury or disease and the
3 total cost of the pension reserve shall be assessed against the second
4 injury fund. The department shall pass upon the application of this
5 section in all state fund cases where benefits are paid for total
6 permanent disability or death and issue an order thereon appealable by
7 the employer. Pending outcome of such appeal the transfer or payment
8 shall be made as required by such order. In cases involving self-
9 insurers, the department shall issue an order appealable by the
10 employer passing on the application of this section. If total
11 disability benefits have been paid by the self-insurer for dates after
12 the first date of permanent total disability, the department shall
13 reimburse the self-insurer from the second injury fund or the
14 supplemental pension fund as indicated.

15 (2) The department shall, in cases of claims of workers sustaining
16 injuries or occupational diseases in the employ of state fund
17 employers, recompute the experience record of such employers when the
18 claims of workers injured in their employ have been found to qualify
19 for payments from the second injury fund after the regular time for
20 computation of such experience records and the department may make
21 appropriate adjustments in such cases including cash refunds or credits
22 to such employers.

23 (3) To encourage employment of injured workers who are not
24 reemployed by the employer at the time of injury, the department may
25 adopt rules providing for the reduction or elimination of premiums or
26 assessments from subsequent employers of such workers and may also
27 adopt rules for the reduction or elimination of charges against such
28 employers in the event of further injury to such workers in their
29 employ.

30 (4) To encourage employment of injured workers who have a
31 developmental disability as defined in RCW 71A.10.020, the department
32 may adopt rules providing for the reduction or elimination of premiums
33 or assessments from employers of such workers and may also adopt rules
34 for the reduction or elimination of charges against their employers in
35 the event of further injury to such workers in their employ.

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

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

5 (2) In every action brought under this section, the plaintiff shall
6 give notice to the department or self-insurer, as the case may be, when
7 the action is filed. The department or self-insurer may file a notice
8 of statutory interest in recovery. When such notice has been filed by
9 the department or self-insurer, the parties shall thereafter serve
10 copies of all notices, motions, pleadings, and other process on the
11 department or self-insurer. The department or self-insurer may then
12 intervene as a party in the action to protect its statutory interest in
13 recovery.

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

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

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

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

26 (1) An election not to proceed against the third person operates as
27 an assignment of the cause of action to the department or self-insurer,
28 as the case may be, which may prosecute or compromise the action in its
29 discretion in the name of the injured worker, beneficiary or legal
30 representative.

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

36 (3) If a beneficiary is a minor child, an election not to proceed

1 against a third person on such beneficiary's cause of action may be
2 exercised by the beneficiary's legal custodian or guardian.

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

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

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

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

16 (d) The injured worker or beneficiary shall be paid any remaining
17 balance.

18 (5) Thereafter no payment shall be made to or on behalf of a worker
19 or beneficiary by the department (~~and/or~~) or self-insurer, as the
20 case may be, for such injury until the amount of any further
21 compensation and benefits shall equal any such remaining balance.
22 Thereafter, such benefits shall be paid by the department (~~and/or~~) or
23 self-insurer, as the case may be, to or on behalf of the worker or
24 beneficiary as though no recovery had been made from a third person.

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

28 (a) The prosecution of such cause of action shall also be for the
29 benefit of the department to the extent of compensation and benefits
30 paid and payable from state funds;

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

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

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

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

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

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

11 (a) The costs and reasonable attorneys' fees shall be paid
12 proportionately by the injured worker or beneficiary and the department
13 and/or self-insurer(~~(: PROVIDED, That))~~, as the case may be. However,
14 the department and/or self-insurer may require court approval of costs
15 and attorneys' fees or may petition a court for determination of the
16 reasonableness of costs and attorneys' fees;

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

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

24 (i) The department and/or self-insurer shall bear its proportionate
25 share of the costs and reasonable attorneys' fees incurred by the
26 worker or beneficiary to the extent of the benefits paid under this
27 title(~~(: PROVIDED, That))~~. However, the department's and/or self-
28 insurer's proportionate share shall not exceed one hundred percent of
29 the costs and reasonable attorneys' fees;

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

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

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

3 (e) Thereafter no payment shall be made to or on behalf of a worker
4 or beneficiary by the department and/or self-insurer for such injury
5 until the amount of any further compensation and benefits shall equal
6 any such remaining balance minus the department's and/or self-insurer's
7 proportionate share of the costs and reasonable attorneys' fees in
8 regards to the remaining balance. This proportionate share shall be
9 determined by dividing the gross recovery amount into the remaining
10 balance amount and multiplying this percentage times the costs and
11 reasonable attorneys' fees incurred by the worker or beneficiary.
12 Thereafter, such benefits shall be paid by the department and/or self-
13 insurer to or on behalf of the worker or beneficiary as though no
14 recovery had been made from a third person.

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

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

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

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

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

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

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

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

31 (7) The ~~((director, or the director's designee,))~~ department or
32 self-insurer, as the case may be, may issue to any person, firm,
33 corporation, municipal corporation, political subdivision of the state,
34 public corporation, or agency of the state, a notice and order to
35 withhold and deliver property of any kind if he or she has reason to
36 believe that there is in the possession of such person, firm,
37 corporation, municipal corporation, political subdivision of the state,
38 public corporation, or agency of the state, property which is due,

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

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

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

33 (2) Unless an election is made within sixty days of the receipt of
34 the demand, and unless an action is instituted or settled within the
35 time granted by the department or self-insurer, the injured worker or
36 beneficiary is deemed to have assigned the action to the department or
37 self-insurer, as the case may be. The department or self-insurer shall

1 allow the worker or beneficiary at least ninety days from the election
2 to institute or settle the action. When a beneficiary is a minor child
3 the demand shall be served upon the legal custodian or guardian of such
4 beneficiary.

5 (3) If an action which has been filed is not diligently prosecuted,
6 the department or self-insurer, as the case may be, may petition the
7 court in which the action is pending for an order assigning the cause
8 of action to the department or self-insurer. Upon a sufficient showing
9 of a lack of diligent prosecution the court in its discretion may issue
10 the order.

11 (4) If the department or self-insurer has taken an assignment of
12 the third party cause of action under subsection (2) of this section,
13 the injured worker or beneficiary may, at the discretion of the
14 department or self-insurer, exercise a right of reelection and assume
15 the cause of action subject to reimbursement of litigation expenses
16 incurred by the department or self-insurer.

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

19 (1) If the injured worker or beneficiary elects to seek damages
20 from the third person, notice of the election must be given to the
21 department or self-insurer, as the case may be. The notice shall be by
22 registered mail, certified mail, or personal service. If an action is
23 filed by the injured worker or beneficiary, a copy of the complaint
24 must be sent by registered mail to the department or self-insurer, as
25 the case may be.

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

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

32 (1) Any compromise or settlement of the third party cause of action
33 by the injured worker or beneficiary which results in less than the
34 entitlement under this title is void unless made with the written
35 approval of the department or self-insurer(~~(: PROVIDED, That)~~), as the

1 case may be. However, for the purposes of this chapter, "entitlement"
2 means benefits and compensation paid and estimated by the department or
3 self-insurer, as the case may be, to be paid in the future.

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

10 **Sec. 18.** RCW 51.28.010 and 2004 c 65 s 3 are each amended to read
11 as follows:

12 (1) Whenever any accident occurs to any worker it shall be the duty
13 of such worker or someone in his or her behalf to forthwith report such
14 accident to his or her employer, superintendent, or supervisor in
15 charge of the work, and of the employer to at once report such accident
16 and the injury resulting therefrom to the department pursuant to RCW
17 51.28.025 where the worker has received treatment from a physician or
18 a licensed advanced registered nurse practitioner, has been
19 hospitalized, disabled from work, or has died as the apparent result of
20 such accident and injury.

21 (2) Upon receipt of such notice of accident, the department or
22 self-insurer, as the case may be, shall immediately forward to the
23 worker or his or her beneficiaries or dependents notification, in
24 nontechnical language, of their rights under this title. The notice
25 must specify the worker's right to receive health services from a
26 physician or a licensed advanced registered nurse practitioner of the
27 worker's choice under RCW 51.36.010, including chiropractic services
28 under RCW 51.36.015, and must list the types of providers authorized to
29 provide these services.

30 **Sec. 19.** RCW 51.28.010 and 2001 c 231 s 1 are each amended to read
31 as follows:

32 (1) Whenever any accident occurs to any worker it shall be the duty
33 of such worker or someone in his or her behalf to forthwith report such
34 accident to his or her employer, superintendent, or supervisor in
35 charge of the work, and of the employer to at once report such accident
36 and the injury resulting therefrom to the department pursuant to RCW

1 51.28.025 where the worker has received treatment from a physician, has
2 been hospitalized, disabled from work, or has died as the apparent
3 result of such accident and injury.

4 (2) Upon receipt of such notice of accident, the department or
5 self-insurer, as the case may be, shall immediately forward to the
6 worker or his or her beneficiaries or dependents notification, in
7 nontechnical language, of their rights under this title. The notice
8 must specify the worker's right to receive health services from a
9 physician of the worker's choice under RCW 51.36.010, including
10 chiropractic services under RCW 51.36.015, and must list the types of
11 providers authorized to provide these services.

12 **Sec. 20.** RCW 51.28.020 and 2004 c 65 s 4 are each amended to read
13 as follows:

14 (1)((+a)) Where a worker is entitled to compensation under this
15 title he or she shall file with the department or his or her self-
16 insured employer, as the case may be, his or her application for such,
17 together with the certificate of the physician or licensed advanced
18 registered nurse practitioner who attended him or her. An application
19 form developed by the department shall include a notice specifying the
20 worker's right to receive health services from a physician or licensed
21 advanced registered nurse practitioner of the worker's choice under RCW
22 51.36.010, including chiropractic services under RCW 51.36.015, and
23 listing the types of providers authorized to provide these services.

24 ((+b)) (2) The physician or licensed advanced registered nurse
25 practitioner who attended the injured worker shall inform the injured
26 worker of his or her rights under this title and lend all necessary
27 assistance in making this application for compensation and such proof
28 of other matters as required by the rules of the department without
29 charge to the worker. The department shall provide physicians with a
30 manual which outlines the procedures to be followed in applications for
31 compensation involving occupational diseases, and which describes
32 claimants' rights and responsibilities related to occupational disease
33 claims.

34 ~~((2) If application for compensation is made to a self-insured~~
35 ~~employer, he or she shall forthwith send a copy of the application to~~
36 ~~the department.))~~

1 **Sec. 21.** RCW 51.28.020 and 2001 c 231 s 2 are each amended to read
2 as follows:

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

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

21 ~~((2) If application for compensation is made to a self-insured
22 employer, he or she shall forthwith send a copy of the application to
23 the department.))~~

24 **Sec. 22.** RCW 51.28.030 and 2004 c 65 s 6 are each amended to read
25 as follows:

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

34 Upon receipt of notice of accident under RCW 51.28.010, the
35 director or self-insurer, as the case may be, shall immediately forward
36 to the party or parties required to make application for compensation

1 under this section, notification, in nontechnical language, of their
2 rights under this title.

3 **Sec. 23.** RCW 51.28.030 and 1972 ex.s. c 43 s 17 are each amended
4 to read as follows:

5 Where death results from injury the parties entitled to
6 compensation under this title, or someone in their behalf, shall make
7 application for the same to the department or self-insurer, as the case
8 may be, which application must be accompanied with proof of death and
9 proof of relationship showing the parties to be entitled to
10 compensation under this title, certificates of attending physician, if
11 any, and such proof as required by the rules of the department.

12 Upon receipt of notice of accident under RCW 51.28.010, the
13 director or self-insurer, as the case may be, shall immediately forward
14 to the party or parties required to make application for compensation
15 under this section, notification, in nontechnical language, of their
16 rights under this title.

17 **Sec. 24.** RCW 51.28.040 and 1977 ex.s. c 199 s 1 are each amended
18 to read as follows:

19 If change of circumstances warrants an increase or rearrangement of
20 compensation, like application shall be made therefor to the department
21 or self-insurer, as the case may be. Where the application has been
22 granted, compensation and other benefits if in order shall be allowed
23 for periods of time up to sixty days prior to the receipt of such
24 application.

25 **Sec. 25.** RCW 51.28.055 and 2004 c 65 s 7 are each amended to read
26 as follows:

27 (1) Except as provided in subsection (2) of this section for claims
28 filed for occupational hearing loss, claims for occupational disease or
29 infection to be valid and compensable must be filed within two years
30 following the date the worker had written notice from a physician or a
31 licensed advanced registered nurse practitioner: (a) Of the existence
32 of his or her occupational disease, and (b) that a claim for disability
33 benefits may be filed. The notice shall also contain a statement that
34 the worker has two years from the date of the notice to file a claim.
35 If the employer is self-insured, the physician or licensed advanced

1 registered nurse practitioner shall file the notice with the self-
2 insurer. If the employer is a state fund employer, the physician or
3 licensed advanced registered nurse practitioner shall file the notice
4 with the department. The department or self-insurer shall send a copy
5 to the worker (~~and to the self-insurer if the worker's employer is~~
6 ~~self-insured~~). However, a claim is valid if it is filed within two
7 years from the date of death of the worker suffering from an
8 occupational disease.

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

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

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

19 **Sec. 26.** RCW 51.28.055 and 2003 2nd sp.s. c 2 s 1 are each amended
20 to read as follows:

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

36 (2)(a) Except as provided in (b) of this subsection, to be valid
37 and compensable, claims for hearing loss due to occupational noise

1 exposure must be filed within two years of the date of the worker's
2 last injurious exposure to occupational noise in employment covered
3 under this title or within one year of September 10, 2003, whichever is
4 later.

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

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

9 **Sec. 27.** RCW 51.28.060 and 1977 ex.s. c 350 s 35 are each amended
10 to read as follows:

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

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

21 **Sec. 28.** RCW 51.28.070 and 1990 c 209 s 2 are each amended to read
22 as follows:

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

1 department or self-insurer regarding any claim may, at the discretion
2 of the department or self-insurer, inspect the claim files and records
3 of injured workers, and other persons may make such inspection, at the
4 department's or self-insurer's discretion, when such persons are
5 rendering assistance to the department or self-insurer at any stage of
6 the proceedings on any matter pertaining to the administration of this
7 title.

8 **Sec. 29.** RCW 51.32.010 and 1977 ex.s. c 350 s 37 are each amended
9 to read as follows:

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

25 **Sec. 30.** RCW 51.32.040 and 2003 c 379 s 27 are each amended to
26 read as follows:

27 (1) Except as provided in RCW 43.20B.720, 72.09.111, 74.20A.260,
28 and 51.32.380, no money paid or payable under this title shall, before
29 the issuance and delivery of the check or warrant, be assigned,
30 charged, or taken in execution, attached, garnished, or pass or be paid
31 to any other person by operation of law, any form of voluntary
32 assignment, or power of attorney. Any such assignment or charge is
33 void unless the transfer is to a financial institution at the request
34 of a worker or other beneficiary and made in accordance with RCW
35 51.32.045.

1 (2)(a) If any worker suffers (i) a permanent partial injury and
2 dies from some other cause than the accident which produced the injury
3 before he or she receives payment of the award for the permanent
4 partial injury or (ii) any other injury before he or she receives
5 payment of any monthly installment covering any period of time before
6 his or her death, the amount of the permanent partial disability award
7 or the monthly payment, or both, shall be paid to the surviving spouse
8 or the child or children if there is no surviving spouse. If there is
9 no surviving spouse and no child or children, the award or the amount
10 of the monthly payment shall be paid by the department or self-insurer,
11 as the case may be, and distributed consistent with the terms of the
12 decedent's will or, if the decedent dies intestate, consistent with the
13 terms of RCW 11.04.015.

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

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

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

37 (b) If any prisoner is injured in the course of his or her
38 employment while participating in a work or training release program

1 authorized by chapter 72.65 RCW and is subject to the provisions of
2 this title, he or she is entitled to payments under this title, subject
3 to the requirements of chapter 72.65 RCW, unless his or her
4 participation in the program has been canceled, or unless he or she is
5 returned to a state correctional institution, as defined in RCW
6 72.65.010(3), as a result of revocation of parole or new sentence.

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

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

15 **Sec. 31.** RCW 51.32.055 and 2004 c 65 s 8 are each amended to read
16 as follows:

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

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

35 ~~(3) A request for determination of permanent disability shall be~~
36 ~~examined by the department or, if authorized in subsection (9) of this~~
37 ~~section, the self insurer, and the department shall issue an order in~~

1 accordance with RCW 51.52.050 or, in the case of a self-insured
2 employer, the self-insurer may: (a) Enter a written order,
3 communicated to the worker and the department self-insurance section in
4 accordance with subsection (9) of this section, or (b) request the
5 department to issue an order in accordance with RCW 51.52.050.

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

18 ~~((+5))~~ (3) The director may establish a medical bureau within the
19 department to perform medical examinations under this section.
20 Physicians hired or retained for this purpose shall be grounded in
21 industrial medicine and in the assessment of industrial physical
22 impairment. ~~((Self-insurers shall bear a proportionate share of the~~
23 ~~cost of the medical bureau in a manner to be determined by the~~
24 ~~department.~~

25 ~~(+6))~~ (4) Where a dispute arises from the handling of any state
26 fund claim before the condition of the injured worker becomes fixed,
27 the worker~~((7))~~ or employer~~((7 or self-insurer))~~ may request the
28 department to resolve the dispute or the director may initiate an
29 inquiry on his or her own motion. In these cases, the department shall
30 proceed as provided in this section and an order shall issue in
31 accordance with RCW 51.52.050.

32 ~~((7)(a) If a claim (i) is accepted by a self-insurer after June~~
33 ~~30, 1986, and before August 1, 1997, (ii) involves only medical~~
34 ~~treatment and the payment of temporary disability compensation under~~
35 ~~RCW 51.32.090 or only the payment of temporary disability compensation~~
36 ~~under RCW 51.32.090, (iii) at the time medical treatment is concluded~~
37 ~~does not involve permanent disability, (iv) is one with respect to~~
38 ~~which the department has not intervened under subsection (6) of this~~

1 ~~section, and (v) the injured worker has returned to work with the self-~~
2 ~~insured employer of record, whether at the worker's previous job or at~~
3 ~~a job that has comparable wages and benefits, the claim may be closed~~
4 ~~by the self-insurer, subject to reporting of claims to the department~~
5 ~~in a manner prescribed by department rules adopted under chapter 34.05~~
6 ~~RCW.~~

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

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

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

1 ~~(b) All determinations of permanent disability for claims accepted~~
2 ~~under this subsection (8) by self insurers shall be made by the self-~~
3 ~~insured section of the department under subsections (1) through (4) of~~
4 ~~this section.~~

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

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

34 ~~(c) Upon closure of a claim under this subsection (9), the self-~~
35 ~~insurer shall enter a written order, communicated to the worker and the~~
36 ~~department self insurance section, which contains the following~~
37 ~~statement clearly set forth in bold face type: "This order constitutes~~
38 ~~notification that your claim is being closed with such medical benefits~~

1 and temporary disability compensation as provided to date and with such
2 award for permanent partial disability, if any, as set forth below, and
3 with the condition that you have returned to work with the self-insured
4 employer. If for any reason you disagree with the conditions or
5 duration of your return to work or the medical benefits, temporary
6 disability compensation provided, or permanent partial disability that
7 has been awarded, you must protest in writing to the Department of
8 Labor and Industries, Self-Insurance Section, within sixty days of the
9 date you received this order. If you do not protest this order to the
10 department, this order will become final."

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

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

24 (11) If within two years of claim closure under subsections (7)
25 through (9) of this section, the department determines that the self-
26 insurer has made payment of benefits because of clerical error, mistake
27 of identity, or innocent misrepresentation or the department discovers
28 a violation of the conditions of claim closure, the department may
29 require the self-insurer to correct the benefits paid or payable. This
30 subsection (11) does not limit in any way the application of RCW
31 51.32.240.

32 (12) For the purposes of this section, "comparable wages and
33 benefits" means wages and benefits that are at least ninety five
34 percent of the wages and benefits received by the worker at the time of
35 injury.)

36 **Sec. 32.** RCW 51.32.055 and 1997 c 416 s 1 are each amended to read
37 as follows:

1 (1) One purpose of this title is to restore the injured worker as
2 nearly as possible to the condition of self-support as an able-bodied
3 worker. Claims shall be closed and benefits for permanent disability
4 shall be determined (~~((under the director's supervision, except as~~
5 ~~otherwise authorized in subsection (9) of this section,))~~) only after
6 the injured worker's condition becomes fixed.

7 (2) (~~All determinations of permanent disabilities shall be made by~~
8 ~~the department, except as otherwise authorized in subsection (9) of~~
9 ~~this section. Either the worker, employer, or self-insurer may make a~~
10 ~~request or the inquiry may be initiated by the director or, as~~
11 ~~authorized in subsection (9) of this section, by the self-insurer on~~
12 ~~the director or the self-insurer's own motion. Determinations shall be~~
13 ~~required in every instance where permanent disability is likely to be~~
14 ~~present. All medical reports and other pertinent information in the~~
15 ~~possession of or under the control of the employer or, if the self-~~
16 ~~insurer has made a request to the department, in the possession of or~~
17 ~~under the control of the self-insurer shall be forwarded to the~~
18 ~~director with the request.~~

19 (3) ~~A request for determination of permanent disability shall be~~
20 ~~examined by the department or, if authorized in subsection (9) of this~~
21 ~~section, the self-insurer, and the department shall issue an order in~~
22 ~~accordance with RCW 51.52.050 or, in the case of a self-insured~~
23 ~~employer, the self-insurer may: (a) Enter a written order,~~
24 ~~communicated to the worker and the department self-insurance section in~~
25 ~~accordance with subsection (9) of this section, or (b) request the~~
26 ~~department to issue an order in accordance with RCW 51.52.050.~~

27 (4) ~~The department or, in cases authorized in subsection (9) of~~
28 ~~this section, the self-insurer may require that the worker present~~
29 ~~himself or herself for a special medical examination by a physician or~~
30 ~~physicians selected by the department, and the department or, in cases~~
31 ~~authorized in subsection (9) of this section,)) The department or the
32 self-insurer may require that the worker present himself or herself for
33 a special medical examination by a physician or physicians selected by
34 the department or the self-insurer and may require that the worker
35 present himself or herself for a personal interview. The costs of the
36 examination or interview, including payment of any reasonable travel
37 expenses, shall be paid by the department or self-insurer, as the case
38 may be.~~

1 ~~((5))~~ (3) The director may establish a medical bureau within the
2 department to perform medical examinations under this section.
3 Physicians hired or retained for this purpose shall be grounded in
4 industrial medicine and in the assessment of industrial physical
5 impairment. ~~((Self insurers shall bear a proportionate share of the
6 cost of the medical bureau in a manner to be determined by the
7 department.~~

8 (6)) (4) Where a dispute arises from the handling of any state
9 fund claim before the condition of the injured worker becomes fixed,
10 the worker(~~(7)~~) or employer(~~(7 or self insurer)~~) may request the
11 department to resolve the dispute or the director may initiate an
12 inquiry on his or her own motion. In these cases, the department shall
13 proceed as provided in this section and an order shall issue in
14 accordance with RCW 51.52.050.

15 ~~((7)(a) If a claim (i) is accepted by a self insurer after June
16 30, 1986, and before August 1, 1997, (ii) involves only medical
17 treatment and the payment of temporary disability compensation under
18 RCW 51.32.090 or only the payment of temporary disability compensation
19 under RCW 51.32.090, (iii) at the time medical treatment is concluded
20 does not involve permanent disability, (iv) is one with respect to
21 which the department has not intervened under subsection (6) of this
22 section, and (v) the injured worker has returned to work with the self-
23 insured employer of record, whether at the worker's previous job or at
24 a job that has comparable wages and benefits, the claim may be closed
25 by the self insurer, subject to reporting of claims to the department
26 in a manner prescribed by department rules adopted under chapter 34.05
27 RCW.~~

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

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

1 for any reason you disagree with the conditions or duration of your
2 return to work or the medical benefits or the temporary disability
3 compensation that has been provided, you must protest in writing to the
4 department of labor and industries, self insurance section, within
5 sixty days of the date you received this order."

6 (8)(a) If a claim (i) is accepted by a self insurer after June 30,
7 1990, and before August 1, 1997, (ii) involves only medical treatment,
8 (iii) does not involve payment of temporary disability compensation
9 under RCW 51.32.090, and (iv) at the time medical treatment is
10 concluded does not involve permanent disability, the claim may be
11 closed by the self insurer, subject to reporting of claims to the
12 department in a manner prescribed by department rules adopted under
13 chapter 34.05 RCW. Upon closure of a claim, the self insurer shall
14 enter a written order, communicated to the worker, which contains the
15 following statement clearly set forth in bold face type: "This order
16 constitutes notification that your claim is being closed with medical
17 benefits only, as provided. If for any reason you disagree with this
18 closure, you must protest in writing to the Department of Labor and
19 Industries, Olympia, within 60 days of the date you received this
20 order. The department will then review your claim and enter a further
21 determinative order."

22 (b) All determinations of permanent disability for claims accepted
23 under this subsection (8) by self insurers shall be made by the self-
24 insured section of the department under subsections (1) through (4) of
25 this section.

26 (9)(a) If a claim: (i) Is accepted by a self insurer after July
27 31, 1997; (ii)(A) involves only medical treatment, or medical treatment
28 and the payment of temporary disability compensation under RCW
29 51.32.090, and a determination of permanent partial disability, if
30 applicable, has been made by the self insurer as authorized in this
31 subsection; or (B) involves only the payment of temporary disability
32 compensation under RCW 51.32.090 and a determination of permanent
33 partial disability, if applicable, has been made by the self insurer as
34 authorized in this subsection; (iii) is one with respect to which the
35 department has not intervened under subsection (6) of this section; and
36 (iv) concerns an injured worker who has returned to work with the self-
37 insured employer of record, whether at the worker's previous job or at
38 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) If a physician submits a report to the self-insurer that
5 concludes that the worker's condition is fixed and stable and supports
6 payment of a permanent partial disability award, and if within fourteen
7 days from the date the self-insurer mailed the report to the attending
8 or treating physician, the worker's attending or treating physician
9 disagrees in writing that the worker's condition is fixed and stable,
10 the self-insurer must get a supplemental medical opinion from a
11 provider on the department's approved examiner's list before closing
12 the claim. In the alternative, the self-insurer may forward the claim
13 to the department, which must review the claim and enter a final order
14 as provided for in RCW 51.52.050.

15 (c) Upon closure of a claim under this subsection (9), the self-
16 insurer shall enter a written order, communicated to the worker and the
17 department self-insurance section, which contains the following
18 statement clearly set forth in bold face type: "This order constitutes
19 notification that your claim is being closed with such medical benefits
20 and temporary disability compensation as provided to date and with such
21 award for permanent partial disability, if any, as set forth below, and
22 with the condition that you have returned to work with the self-insured
23 employer. If for any reason you disagree with the conditions or
24 duration of your return to work or the medical benefits, temporary
25 disability compensation provided, or permanent partial disability that
26 has been awarded, you must protest in writing to the Department of
27 Labor and Industries, Self-Insurance Section, within sixty days of the
28 date you received this order. If you do not protest this order to the
29 department, this order will become final."

30 (d) All determinations of permanent partial disability for claims
31 accepted by self-insurers under this subsection (9) may be made by the
32 self-insurer or the self-insurer may request a determination by the
33 self-insured section of the department. All determinations shall be
34 made under subsections (1) through (4) of this section.

35 (10) If the department receives a protest of an order issued by a
36 self-insurer under subsections (7) through (9) of this section, the
37 self-insurer's closure order must be held in abeyance. The department
38 shall review the claim closure action and enter a further determinative

1 ~~order as provided for in RCW 51.52.050. If no protest is timely filed,~~
2 ~~the closing order issued by the self insurer shall become final and~~
3 ~~shall have the same force and effect as a department order that has~~
4 ~~become final under RCW 51.52.050.~~

5 ~~(11) If within two years of claim closure under subsections (7)~~
6 ~~through (9) of this section, the department determines that the self-~~
7 ~~insurer has made payment of benefits because of clerical error, mistake~~
8 ~~of identity, or innocent misrepresentation or the department discovers~~
9 ~~a violation of the conditions of claim closure, the department may~~
10 ~~require the self insurer to correct the benefits paid or payable. This~~
11 ~~subsection (11) does not limit in any way the application of RCW~~
12 ~~51.32.240.~~

13 ~~(12) For the purposes of this section, "comparable wages and~~
14 ~~benefits" means wages and benefits that are at least ninety five~~
15 ~~percent of the wages and benefits received by the worker at the time of~~
16 ~~injury.)~~

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

19 (1) When the ~~((supervisor of industrial insurance shall))~~
20 department or the self-insurer, as the case may be, determines that
21 permanent total disability results from the injury, the worker shall
22 receive monthly during the period of such disability:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1	AFTER	PERCENTAGE
2	June 30, 1993	105%
3	June 30, 1994	110%
4	June 30, 1995	115%
5	June 30, 1996	120%

6 The limitations under this subsection shall not apply to the
7 payments provided for in subsection (3) of this section.

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

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

15 **Sec. 34.** RCW 51.32.080 and 1993 c 520 s 1 are each amended to read
16 as follows:

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

20	LOSS BY AMPUTATION	
21	Of leg above the knee joint with short	
22	thigh stump (3" or less below the	
23	tuberosity of ischium).....	\$54,000.00
24	Of leg at or above knee joint with	
25	functional stump.....	48,600.00
26	Of leg below knee joint.....	43,200.00
27	Of leg at ankle (Syme).....	37,800.00
28	Of foot at mid-metatarsals.....	18,900.00
29	Of great toe with resection of metatarsal	
30	bone.....	11,340.00
31	Of great toe at metatarsophalangeal	
32	joint.....	6,804.00

1	Of great toe at interphalangeal joint	3,600.00
2	Of lesser toe (2nd to 5th) with resection of	
3	metatarsal bone	4,140.00
4	Of lesser toe at metatarsophalangeal	
5	joint	2,016.00
6	Of lesser toe at proximal interphalangeal	
7	joint	1,494.00
8	Of lesser toe at distal interphalangeal	
9	joint	378.00
10	Of arm at or above the deltoid insertion or	
11	by disarticulation at the shoulder	54,000.00
12	Of arm at any point from below the deltoid	
13	insertion to below the elbow joint at	
14	the insertion of the biceps tendon	51,300.00
15	Of arm at any point from below the elbow	
16	joint distal to the insertion of the	
17	biceps tendon to and including	
18	mid-metacarpal amputation of the	
19	hand	48,600.00
20	Of all fingers except the thumb at	
21	metacarpophalangeal joints	29,160.00
22	Of thumb at metacarpophalangeal joint or	
23	with resection of carpometacarpal	
24	bone	19,440.00
25	Of thumb at interphalangeal joint	9,720.00
26	Of index finger at metacarpophalangeal	
27	joint or with resection of metacarpal	
28	bone	12,150.00
29	Of index finger at proximal	
30	interphalangeal joint	9,720.00
31	Of index finger at distal interphalangeal	
32	joint	5,346.00
33	Of middle finger at metacarpophalangeal	
34	joint or with resection of metacarpal	
35	bone	9,720.00
36	Of middle finger at proximal	
37	interphalangeal joint	7,776.00

1	Of middle finger at distal interphalangeal	
2	joint	4,374.00
3	Of ring finger at metacarpophalangeal	
4	joint or with resection of metacarpal	
5	bone	4,860.00
6	Of ring finger at proximal interphalangeal	
7	joint	3,888.00
8	Of ring finger at distal interphalangeal	
9	joint	2,430.00
10	Of little finger at metacarpophalangeal	
11	joint or with resection of metacarpal	
12	bone	2,430.00
13	Of little finger at proximal interphalangeal	
14	joint	1,944.00
15	Of little finger at distal interphalangeal	
16	joint	972.00

17 MISCELLANEOUS

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

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

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

27 (ii) Beginning on July 1, 1994, and each July 1 thereafter, the
 28 compensation amounts for the specified disabilities listed in (a) of
 29 this subsection, as adjusted under (b)(i) of this subsection, shall be
 30 readjusted to reflect the percentage change in the consumer price
 31 index, calculated as follows: The index for the calendar year
 32 preceding the year in which the July calculation is made, to be known
 33 as "calendar year A," is divided by the index for the calendar year
 34 preceding calendar year A, and the resulting ratio is multiplied by the
 35 compensation amount in effect on June 30 immediately preceding the July
 36 1st on which the respective calculation is made. For the purposes of

1 this subsection, "index" means the same as the definition in RCW
2 2.12.037(1).

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

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

27 (b) Until July 1, 1993, for purposes of calculating monetary
28 benefits under (a) of this subsection, the amount payable for total
29 bodily impairment shall be deemed to be ninety thousand dollars.
30 Beginning on July 1, 1993, for purposes of calculating monetary
31 benefits under (a) of this subsection, the amount payable for total
32 bodily impairment shall be adjusted as follows:

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

36 (ii) Beginning on July 1, 1994, and each July 1 thereafter, the
37 amount payable for total bodily impairment prescribed in (b)(i) of this

1 subsection shall be adjusted as provided in subsection (1)(b)(ii) of
2 this section.

3 (c) Until July 1, 1993, the total compensation for all unspecified
4 permanent partial disabilities resulting from the same injury shall not
5 exceed the sum of ninety thousand dollars. Beginning on July 1, 1993,
6 total compensation for all unspecified permanent partial disabilities
7 resulting from the same injury shall not exceed a sum calculated as
8 follows:

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

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

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

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

29 (6) When the compensation provided for in subsections (1) through
30 (3) of this section exceeds three times the average monthly wage in the
31 state as computed under the provisions of RCW 51.08.018, payment shall
32 be made in monthly payments in accordance with the schedule of
33 temporary total disability payments set forth in RCW 51.32.090 until
34 such compensation is paid to the injured worker in full, except that
35 the first monthly payment shall be in an amount equal to three times
36 the average monthly wage in the state as computed under the provisions
37 of RCW 51.08.018, and interest shall be paid at the rate of eight
38 percent on the unpaid balance of such compensation commencing with the

1 second monthly payment. However, upon application of the injured
2 worker or survivor the monthly payment may be converted, in whole or in
3 part, into a lump sum payment, in which event the monthly payment shall
4 cease in whole or in part. Such conversion may be made only upon
5 written application of the injured worker or survivor to the department
6 or self-insurer, as the case may be, and shall rest in the discretion
7 of the department or self-insurer, as the case may be, depending upon
8 the merits of each individual application. Upon the death of a worker
9 all unpaid installments accrued shall be paid according to the payment
10 schedule established prior to the death of the worker to the widow or
11 widower, or if there is no widow or widower surviving, to the dependent
12 children of such claimant, and if there are no such dependent children,
13 then to such other dependents as defined by this title.

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

16 **Sec. 35.** RCW 51.32.095 and 2004 c 65 s 10 are each amended to read
17 as follows:

18 (1) One of the primary purposes of this title is to enable the
19 injured worker to become employable at gainful employment. To this
20 end, the department or self-insurers, as the case may be, shall utilize
21 the services of individuals and organizations, public or private, whose
22 experience, training, and interests in vocational rehabilitation and
23 retraining qualify them to lend expert assistance to the supervisor of
24 industrial insurance or self-insurers in such programs of vocational
25 rehabilitation as may be reasonable to make the worker employable
26 consistent with his or her physical and mental status. Where, after
27 evaluation and recommendation by such individuals or organizations and
28 prior to final evaluation of the worker's permanent disability and in
29 the sole opinion of the supervisor or supervisor's designee, or self-
30 insurer, as the case may be, whether or not medical treatment has been
31 concluded, vocational rehabilitation is both necessary and likely to
32 enable the injured worker to become employable at gainful employment,
33 the supervisor or supervisor's designee may, in his or her sole
34 discretion, pay or, if the employer is a self-insurer, (~~direct~~) the
35 self-insurer (~~to~~) may pay the cost as provided in subsection (3) of
36 this section.

1 (2) When in the sole discretion of the supervisor or the
2 supervisor's designee, or the self-insurer, as the case may be,
3 vocational rehabilitation is both necessary and likely to make the
4 worker employable at gainful employment, then the following order of
5 priorities shall be used:

6 (a) Return to the previous job with the same employer;

7 (b) Modification of the previous job with the same employer
8 including transitional return to work;

9 (c) A new job with the same employer in keeping with any
10 limitations or restrictions;

11 (d) Modification of a new job with the same employer including
12 transitional return to work;

13 (e) Modification of the previous job with a new employer;

14 (f) A new job with a new employer or self-employment based upon
15 transferable skills;

16 (g) Modification of a new job with a new employer;

17 (h) A new job with a new employer or self-employment involving on-
18 the-job training;

19 (i) Short-term retraining and job placement.

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

30 (b) Beginning with vocational rehabilitation plans approved on or
31 after July 1, 1999, costs for vocational rehabilitation benefits
32 allowed (~~((by the supervisor or supervisor's designee))~~) under subsection
33 (1) of this section may include the cost of books, tuition, fees,
34 supplies, equipment, child or dependent care, and other necessary
35 expenses for any such worker in an amount not to exceed four thousand
36 dollars in any fifty-two week period (~~((except as authorized by RCW~~
37 ~~51.60.060))~~), and the cost of transportation and continuing the

1 temporary total disability compensation under RCW 51.32.090 while the
2 worker is actively and successfully undergoing a formal program of
3 vocational rehabilitation.

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

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

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

20 (4) In addition to the vocational rehabilitation expenditures
21 provided for under subsection (3) of this section, an additional five
22 thousand dollars may, upon authorization of the supervisor or the
23 supervisor's designee, or self-insurer, as the case may be, be expended
24 for: (a) Accommodations for an injured worker that are medically
25 necessary for the worker to participate in an approved retraining plan;
26 and (b) accommodations necessary to perform the essential functions of
27 an occupation in which an injured worker is seeking employment,
28 consistent with the retraining plan or the recommendations of a
29 vocational evaluation. The injured worker's attending physician or
30 licensed advanced registered nurse practitioner must verify the
31 necessity of the modifications or accommodations. The total
32 expenditures authorized in this subsection and the expenditures
33 authorized under RCW 51.32.250 shall not exceed five thousand dollars.

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

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

4 ~~((The benefits in this section shall be provided for the
5 injured workers of self-insured employers.))~~ Self-insurers shall
6 ~~((report both benefits provided and benefits denied under this section
7 in the manner prescribed by the department by rule adopted under
8 chapter 34.05 RCW.))~~ issue a written determination providing or denying
9 benefits under this section. The determination shall state, in bold-
10 faced type of at least ten-point font, that such determination becomes
11 final within fifteen days from the date the determination is
12 communicated to the parties unless a written protest is filed with the
13 director in Olympia. The self-insurer's determination may not be
14 appealed to the board of industrial insurance appeals. If a worker
15 timely protests a determination issued by a self-insured employer under
16 this section, the director may~~((, in his or her sole discretion and
17 upon his or her own initiative or at any time that a dispute arises
18 under this section,))~~ promptly make such inquiries as circumstances
19 require ~~((and))~~, take such other action as he or she considers will
20 properly determine the matter and protect the rights of the parties,
21 and determine whether, in the director's sole discretion, vocational
22 rehabilitation is both necessary and likely to make the worker
23 employable at gainful employment.

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

28 **Sec. 36.** RCW 51.32.095 and 1999 c 110 s 1 are each amended to read
29 as follows:

30 (1) One of the primary purposes of this title is to enable the
31 injured worker to become employable at gainful employment. To this
32 end, the department or self-insurers, as the case may be, shall utilize
33 the services of individuals and organizations, public or private, whose
34 experience, training, and interests in vocational rehabilitation and
35 retraining qualify them to lend expert assistance to the supervisor of
36 industrial insurance or self-insurers in such programs of vocational
37 rehabilitation as may be reasonable to make the worker employable

1 consistent with his or her physical and mental status. Where, after
2 evaluation and recommendation by such individuals or organizations and
3 prior to final evaluation of the worker's permanent disability and in
4 the sole opinion of the supervisor or supervisor's designee, or self-
5 insurer, as the case may be, whether or not medical treatment has been
6 concluded, vocational rehabilitation is both necessary and likely to
7 enable the injured worker to become employable at gainful employment,
8 the supervisor or supervisor's designee may, in his or her sole
9 discretion, pay or, if the employer is a self-insurer, (~~direct~~) the
10 self-insurer (~~to~~) may pay the cost as provided in subsection (3) of
11 this section.

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

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

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

1 and the cost of continuing the temporary total disability compensation
2 under RCW 51.32.090 while the worker is actively and successfully
3 undergoing a formal program of vocational rehabilitation.

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

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

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

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

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

1 consistent with the retraining plan or the recommendations of a
2 vocational evaluation. The injured worker's attending physician must
3 verify the necessity of the modifications or accommodations. The total
4 expenditures authorized in this subsection and the expenditures
5 authorized under RCW 51.32.250 shall not exceed five thousand dollars.

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

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

14 (7) (~~The benefits in this section shall be provided for the~~
15 ~~injured workers of self-insured employers.~~) Self-insurers shall
16 (~~report both benefits provided and benefits denied under this section~~
17 ~~in the manner prescribed by the department by rule adopted under~~
18 ~~chapter 34.05 RCW.~~) issue a written determination providing or denying
19 benefits under this section. The determination shall state, in bold-
20 faced type of at least ten-point font, that such determination becomes
21 final within fifteen days from the date the determination is
22 communicated to the parties unless a written protest is filed with the
23 director in Olympia. The self-insurer's determination may not be
24 appealed to the board of industrial insurance appeals. If a worker
25 timely protests a determination issued by a self-insured employer under
26 this section, the director may(~~, in his or her sole discretion and~~
27 ~~upon his or her own initiative or at any time that a dispute arises~~
28 ~~under this section,~~) promptly make such inquiries as circumstances
29 require (~~and~~), take such other action as he or she considers will
30 properly determine the matter and protect the rights of the parties,
31 and determine whether, in the director's sole discretion, vocational
32 rehabilitation is both necessary and likely to make the worker
33 employable at gainful employment.

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

1 **Sec. 37.** RCW 51.32.110 and 1997 c 325 s 3 are each amended to read
2 as follows:

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

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

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

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

36 (i) In the case of a worker insured by the department, the worker
37 shall be paid compensation out of the accident fund in an amount equal

1 to his or her usual wages for the time lost from work while attending
2 the medical examination; or

3 (ii) In the case of a worker of a self-insurer, the self-insurer
4 shall pay the worker an amount equal to his or her usual wages for the
5 time lost from work while attending the medical examination.

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

8 **Sec. 38.** RCW 51.32.160 and 1995 c 253 s 2 are each amended to read
9 as follows:

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

25 (b) "Closing order" as used in this section means an order based on
26 factors which include medical recommendation, advice, or examination.

27 (c) Applications for benefits where the claim has been closed
28 without medical recommendation, advice, or examination are not subject
29 to the seven year limitation of this section. The preceding sentence
30 shall not apply to any closing order issued prior to July 1, 1981.
31 First closing orders issued between July 1, 1981, and July 1, 1985,
32 shall, for the purposes of this section only, be deemed issued on July
33 1, 1985. The time limitation of this section shall be ten years in
34 claims involving loss of vision or function of the eyes.

35 (d) If an order denying an application to reopen filed on or after
36 July 1, 1988, is not issued within ninety days of receipt of such
37 application by the self-insured employer or the department, as the case

1 may be, such application shall be deemed granted. However, for good
2 cause, the department or self-insurer, as the case may be, may extend
3 the time for making the final determination on the application for an
4 additional sixty days.

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

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

14 **Sec. 39.** RCW 51.32.195 and 1987 c 290 s 1 are each amended to read
15 as follows:

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

25 **Sec. 40.** RCW 51.32.210 and 1977 ex.s. c 350 s 55 are each amended
26 to read as follows:

27 Claims of injured workers (~~of employers who have secured the~~
28 ~~payment of compensation by insuring with the department~~) shall be
29 promptly acted upon by the department or self-insurer, as the case may
30 be. Where temporary disability compensation is payable, the first
31 payment thereof shall be mailed within fourteen days after receipt of
32 the claim at the department (~~'s offices in Olympia~~) or self-insurer,
33 as the case may be, and shall continue at regular semimonthly or
34 biweekly intervals. The payment of this or any other benefits under
35 this title, prior to the entry of an order (~~by the department~~) in
36 accordance with RCW 51.52.050 (~~as now or hereafter amended~~), shall be

1 not considered a binding determination of the obligations of the
2 department or self-insurer, as the case may be, under this title. The
3 acceptance of compensation by the worker or his or her beneficiaries
4 prior to such order shall likewise not be considered a binding
5 determination of their rights under this title.

6 **Sec. 41.** RCW 51.32.240 and 2004 c 243 s 7 are each amended to read
7 as follows:

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

19 (b) Except as provided in subsections (3), (4), and (5) of this
20 section, the department or self-insurer, as the case may be, may only
21 assess an overpayment of benefits because of adjudicator error when the
22 order upon which the overpayment is based is not yet final as provided
23 in RCW 51.52.050 and 51.52.060. "Adjudicator error" includes the
24 failure to consider information in the claim file, failure to secure
25 adequate information, or an error in judgment.

26 (c) The director or self-insurer, as the case may be, pursuant to
27 rules adopted in accordance with the procedures provided in the
28 administrative procedure act, chapter 34.05 RCW, may exercise ((his))
29 discretion to waive, in whole or in part, the amount of any such timely
30 claim where the recovery would be against equity and good conscience.

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

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

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

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

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

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

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

16 (i) Willful false statement; or

17 (ii) Willful misrepresentation, omission, or concealment of any
18 material fact.

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

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

26 (e) For purposes of this subsection (5), a material fact is one
27 which would result in additional, increased, or continued benefits,
28 including but not limited to facts about physical restrictions, or
29 work-type activities which either result in wages or income or would be
30 reasonably expected to do so. Wages or income include the receipt of
31 any goods or services. For a work-type activity to be reasonably
32 expected to result in wages or income, a pattern of repeated activity
33 must exist. For those activities that would reasonably be expected to
34 result in wages or produce income, but for which actual wage or income
35 information cannot be reasonably determined, the department or self-
36 insurer shall impute wages pursuant to RCW 51.08.178(4).

37 (6) The worker, beneficiary, or other person affected thereby shall
38 have the right to contest an order assessing an overpayment pursuant to

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

30 The director, director's designee, or self-insurer, as the case may
31 be, may issue to any person, firm, corporation, municipal corporation,
32 political subdivision of the state, public corporation, or agency of
33 the state, a notice to withhold and deliver property of any kind if
34 there is reason to believe that there is in the possession of such
35 person, firm, corporation, municipal corporation, political subdivision
36 of the state, public corporation, or agency of the state, property that
37 is due, owing, or belonging to any worker, beneficiary, or other person
38 upon whom a warrant has been served for payments due the department or

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

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

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

32 **Sec. 42.** RCW 51.36.010 and 2004 c 65 s 11 are each amended to read
33 as follows:

34 Upon the occurrence of any injury to a worker entitled to
35 compensation under the provisions of this title, he or she shall
36 receive proper and necessary medical and surgical services at the hands
37 of a physician or licensed advanced registered nurse practitioner of

1 his or her own choice, if conveniently located, and proper and
2 necessary hospital care and services during the period of his or her
3 disability from such injury, but the same shall be limited in point of
4 duration as follows:

5 In the case of permanent partial disability, not to extend beyond
6 the date when compensation shall be awarded him or her, except when the
7 worker returned to work before permanent partial disability award is
8 made, in such case not to extend beyond the time when monthly
9 allowances to him or her shall cease; in case of temporary disability
10 not to extend beyond the time when monthly allowances to him or her
11 shall cease(~~(:—PROVIDED, That)~~). However, after any injured worker
12 has returned to his or her work his or her medical and surgical
13 treatment may be continued if, and so long as, such continuation is
14 deemed necessary by the supervisor of industrial insurance or self-
15 insurer, as the case may be, to be necessary to his or her more
16 complete recovery; in case of a permanent total disability not to
17 extend beyond the date on which a lump sum settlement is made with him
18 or her or he or she is placed upon the permanent pension roll(~~(:—~~
19 ~~PROVIDED, HOWEVER, That)~~). The supervisor of industrial insurance or
20 self-insurer, solely in his or her discretion, may authorize continued
21 medical and surgical treatment for conditions previously accepted (~~by~~
22 ~~the department~~) when such medical and surgical treatment is deemed
23 necessary by the supervisor of industrial insurance or self-insurer to
24 protect such worker's life or provide for the administration of medical
25 and therapeutic measures including payment of prescription medications,
26 but not including those controlled substances currently scheduled by
27 the state board of pharmacy as Schedule I, II, III, or IV substances
28 under chapter 69.50 RCW, which are necessary to alleviate continuing
29 pain which results from the industrial injury. In order to authorize
30 such continued treatment the written order of the supervisor of
31 industrial insurance or self-insurer issued in advance of the
32 continuation shall be necessary. Self-insurers shall issue an order
33 providing or denying such continued treatment. The order shall state,
34 in boldface type of at least ten-point font, that such order becomes
35 final within fifteen days from the date the order is communicated to
36 the parties unless a written protest is filed with the supervisor of
37 industrial insurance in Olympia. The self-insurer's order may not be
38 appealed to the board of industrial insurance appeals. If a worker

1 timely protests an order issued by a self-insurer, the supervisor of
2 industrial insurance shall promptly make such inquiries as
3 circumstances require and determine whether, in the supervisor's sole
4 discretion, such continued treatment is necessary to protect the
5 worker's life or provide for the administration of medical and
6 therapeutic measures including payment of prescription medications, but
7 not including those controlled substances currently scheduled by the
8 state board of pharmacy as Schedule I, II, III, or IV substances under
9 chapter 69.50 RCW, which are necessary to alleviate continuing pain
10 which results from the industrial injury.

11 The supervisor of industrial insurance, the supervisor's designee,
12 or a self-insurer, as the case may be, in his or her sole discretion,
13 may authorize inoculation or other immunological treatment in cases in
14 which a work-related activity has resulted in probable exposure of the
15 worker to a potential infectious occupational disease. Authorization
16 of such treatment does not bind the department or self-insurer in any
17 adjudication of a claim by the same worker or the worker's beneficiary
18 for an occupational disease.

19 **Sec. 43.** RCW 51.36.010 and 1986 c 58 s 6 are each amended to read
20 as follows:

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

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

1 insurer, as the case may be, to be necessary to his or her more
2 complete recovery; in case of a permanent total disability not to
3 extend beyond the date on which a lump sum settlement is made with him
4 or her or he or she is placed upon the permanent pension roll(~~(+~~
5 ~~PROVIDED, HOWEVER, That~~)). The supervisor of industrial insurance or
6 self-insurer, solely in his or her discretion, may authorize continued
7 medical and surgical treatment for conditions previously accepted (~~by~~
8 ~~the department~~)) when such medical and surgical treatment is deemed
9 necessary by the supervisor of industrial insurance or self-insurer to
10 protect such worker's life or provide for the administration of medical
11 and therapeutic measures including payment of prescription medications,
12 but not including those controlled substances currently scheduled by
13 the state board of pharmacy as Schedule I, II, III, or IV substances
14 under chapter 69.50 RCW, which are necessary to alleviate continuing
15 pain which results from the industrial injury. In order to authorize
16 such continued treatment the written order of the supervisor of
17 industrial insurance or self-insurer issued in advance of the
18 continuation shall be necessary. Self-insurers shall issue an order
19 providing or denying such continued treatment. The order shall state,
20 in boldface type of at least ten-point font, that such order becomes
21 final within fifteen days from the date the order is communicated to
22 the parties unless a written protest is filed with the supervisor of
23 industrial insurance in Olympia. The self-insurer's order may not be
24 appealed to the board of industrial insurance appeals. If a worker
25 timely protests an order issued by a self-insurer, the supervisor of
26 industrial insurance shall promptly make such inquiries as
27 circumstances require and determine whether, in the supervisor's sole
28 discretion, such continued treatment is necessary to protect the
29 worker's life or provide for the administration of medical and
30 therapeutic measures including payment of prescription medications, but
31 not including those controlled substances currently scheduled by the
32 state board of pharmacy as Schedule I, II, III, or IV substances under
33 chapter 69.50 RCW, which are necessary to alleviate continuing pain
34 which results from the industrial injury.

35 The supervisor of industrial insurance, the supervisor's designee,
36 or a self-insurer, as the case may be, in his or her sole discretion,
37 may authorize inoculation or other immunological treatment in cases in
38 which a work-related activity has resulted in probable exposure of the

1 worker to a potential infectious occupational disease. Authorization
2 of such treatment does not bind the department or self-insurer in any
3 adjudication of a claim by the same worker or the worker's beneficiary
4 for an occupational disease.

5 **Sec. 44.** RCW 51.36.015 and 1994 c 94 s 1 are each amended to read
6 as follows:

7 Subject to the other provisions of this title, the health services
8 that are available to an injured worker under RCW 51.36.010 include
9 chiropractic care and evaluation. For the purposes of assisting the
10 department or self-insurer in making claims determinations, an injured
11 worker may be required by the department or self-insurer, as the case
12 may be, to undergo examination by a chiropractor licensed under chapter
13 18.25 RCW.

14 **Sec. 45.** RCW 51.36.020 and 1999 c 395 s 1 are each amended to read
15 as follows:

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

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

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

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

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

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

12 (7) Whenever in the sole discretion of the supervisor or self-
13 insurer, as the case may be, it is reasonable and necessary to provide
14 residence modifications necessary to meet the needs and requirements of
15 the worker who has sustained catastrophic injury, the department or
16 self-insurer may (~~be ordered to~~) pay an amount not to exceed the
17 state's average annual wage for one year as determined under RCW
18 50.04.355(~~, as now existing or hereafter amended,~~) toward the cost of
19 such modifications or construction. Such payment shall only be made
20 for the construction or modification of a residence in which the
21 injured worker resides. Only one residence of any worker may be
22 modified or constructed under this subsection, although (~~the~~
23 ~~supervisor may order~~) there may be more than one payment for any one
24 home, up to the maximum amount permitted by this section.

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

32 (b) In the sole discretion of the supervisor or self-insurer, as
33 the case may be, after his or her review, the amount paid under this
34 subsection may be increased by no more than four thousand dollars by
35 written order (~~of the supervisor~~).

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

1 (10) Self-insurers shall issue a written determination providing or
2 denying benefits under subsections (7) and (8) of this section. The
3 determination shall state, in boldface type of at least ten-point font,
4 that such determination becomes final within fifteen days from the date
5 the determination is communicated to the parties unless a written
6 protest is filed with the supervisor of industrial insurance in
7 Olympia. The self-insurer's determination may not be appealed to the
8 board of industrial insurance appeals. If a worker timely protests a
9 determination issued by a self-insured employer under subsections (7)
10 and (8) of this section, the supervisor may promptly make such
11 inquiries as are necessary and determine whether, in the supervisor's
12 sole discretion, such benefits are reasonable and necessary.

13 **Sec. 46.** RCW 51.36.060 and 2004 c 65 s 12 are each amended to read
14 as follows:

15 Physicians or licensed advanced registered nurse practitioners
16 examining or attending injured workers under this title shall comply
17 with rules and regulations adopted by the director, and shall make such
18 reports as may be requested by the department or self-insurer upon the
19 condition or treatment of any such worker, or upon any other matters
20 concerning such workers in their care. Except under RCW 49.17.210 and
21 49.17.250, all medical information in the possession or control of any
22 person and relevant to the particular injury in the opinion of the
23 department or self-insurer pertaining to any worker whose injury or
24 occupational disease is the basis of a claim under this title shall be
25 made available at any stage of the proceedings to the employer, the
26 claimant's representative, and the department upon request, and no
27 person shall incur any legal liability by reason of releasing such
28 information.

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

31 Physicians examining or attending injured workers under this title
32 shall comply with rules and regulations adopted by the director, and
33 shall make such reports as may be requested by the department or self-
34 insurer upon the condition or treatment of any such worker, or upon any
35 other matters concerning such workers in their care. Except under RCW
36 49.17.210 and 49.17.250, all medical information in the possession or

1 control of any person and relevant to the particular injury in the
2 opinion of the department or self-insurer pertaining to any worker
3 whose injury or occupational disease is the basis of a claim under this
4 title shall be made available at any stage of the proceedings to the
5 employer, the claimant's representative, and the department upon
6 request, and no person shall incur any legal liability by reason of
7 releasing such information.

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

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

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

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

1 (2) The department may summarily deny a request for penalties if on
2 its face it is deemed frivolous; in all other cases the department
3 shall require the self-insured employer to file a written, substantive
4 response. In such event, the self-insured employer shall have twenty
5 working days to provide relevant documents to the department and
6 respond to the request for penalties by the claimant. The department
7 shall issue an order determining whether there was an unreasonable
8 delay or refusal to pay benefits within sixty days after receipt of the
9 documents requested from the self-insurer. Failure of the department
10 to review the request and issue a timely order shall result in the
11 issuance of an order denying the request for penalties. Any order
12 under this section shall conform to the requirements of RCW 51.52.050.

13 (3) In an allowed claim, the worker may request the department to
14 direct the self-insurer to issue an order concerning the provision of
15 benefits. The department may make such inquiries as circumstances
16 require. If the department requests information from a self-insurer by
17 certified mail, the self-insurer shall submit all information in its
18 possession concerning the claim within ten working days from the date
19 of receipt of such certified notice. The department may in writing
20 direct the self-insurer to issue an order within ninety days, or to
21 provide good cause why an order cannot be issued. If the self-insurer
22 fails to issue an order or to provide good cause within ninety days,
23 the department may, within thirty days, issue an order determining
24 whether the worker is entitled to the benefits and, if so, directing
25 the self-insurer to provide the benefits.

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

28 (1) The books, records and payrolls of the employer pertinent to
29 the administration of this title shall always be open to inspection by
30 the department or its traveling auditor, agent or assistant, for the
31 purpose of ascertaining the correctness of the payroll, the persons
32 employed, and such other information as may be necessary for the
33 department and its management under this title.

34 (2) Refusal on the part of the employer to submit his or her books,
35 records and payrolls for such inspection to the department, or any
36 assistant presenting written authority from the director, shall subject

1 the offending employer to a penalty determined by the director but not
2 to exceed two hundred fifty dollars for each offense and the individual
3 who personally gives such refusal is guilty of a misdemeanor.

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

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

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

20 (6) If within two years of claim closure the department determines
21 by audit that the self-insurer has made payment of benefits because of
22 clerical error, mistake of identity, or innocent misrepresentation, the
23 department may require the self-insurer to correct the benefits paid or
24 payable. Any such order as a result of an audit shall not disturb the
25 order closing the claim.

26 **Sec. 51.** RCW 51.48.040 and 2003 c 53 s 282 are each amended to
27 read as follows:

28 (1) The books, records and payrolls of the employer pertinent to
29 the administration of this title shall always be open to inspection by
30 the department or its traveling auditor, agent or assistant, for the
31 purpose of ascertaining the correctness of the payroll, the persons
32 employed, and such other information as may be necessary for the
33 department and its management under this title.

34 (2) Refusal on the part of the employer to submit his or her books,
35 records and payrolls for such inspection to the department, or any
36 assistant presenting written authority from the director, shall subject

1 the offending employer to a penalty determined by the director but not
2 to exceed two hundred fifty dollars for each offense and the individual
3 who personally gives such refusal is guilty of a misdemeanor.

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

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

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

20 **Sec. 52.** RCW 51.48.080 and 1985 c 347 s 7 are each amended to read
21 as follows:

22 (1) Every person, firm or corporation who violates or fails to
23 obey, observe or comply with any rule of the department (~~promulgated~~)
24 adopted under authority of this title, shall be subject to a penalty of
25 not to exceed five hundred dollars.

26 (2) Except as provided in subsection (3) of this section, the
27 department may impose penalties not to exceed two thousand five hundred
28 dollars against a self-insured employer when it determines by audit
29 pursuant to RCW 51.48.040 that the self-insured employer has:

30 (a) Failed to pay or provide benefits to a worker or on a worker's
31 behalf on a timely basis;

32 (b) Paid its injured workers monetary benefits in incorrect
33 amounts;

34 (c) Failed to issue allowance or rejection orders on a timely
35 basis;

36 (d) Failed to issue orders closing a claim within sixty days after

1 the attending physician has found an injured worker to be fixed and
2 stable and a permanent disability level has been established by a
3 preponderance of the medical evidence.

4 (3) The department may impose penalties not to exceed twenty-five
5 thousand dollars against a self-insured employer when it determines by
6 audit pursuant to RCW 51.48.040 that the self-insured employer has
7 intentionally and repeatedly committed violations set forth in
8 subsection (2)(a) through (d) of this section.

9 (4) Self-insured employer audits discovering claims processing and
10 clerical errors not involving violations set forth in subsection (2)(a)
11 through (d) of this section are not subject to assessment of penalties.

12 (5) The department shall adopt a schedule of penalties that will
13 take into account the severity and number of violations.

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

16 **Sec. 53.** RCW 51.52.050 and 2004 c 243 s 8 are each amended to read
17 as follows:

18 (1) Except as provided in RCW 51.32.095, 51.36.010, and 51.36.020,
19 whenever the department or self-insurer has made any order, decision,
20 or award, it shall promptly serve the worker, beneficiary, employer, or
21 other person affected thereby, with a copy thereof by mail, which shall
22 be addressed to such person at his or her last known address as shown
23 by the records of the department or self-insurer, as the case may be.
24 The copy, in case the same is a final order, decision, or award, shall
25 bear on the same side of the same page on which is found the amount of
26 the award, a statement, set in black faced type of at least ten point
27 body or size, that such final order, decision, or award shall become
28 final within sixty days from the date the order is communicated to the
29 parties unless a written request for reconsideration is filed with the
30 department of labor and industries, Olympia, and in cases involving a
31 self-insurer with the self-insurer, or an appeal is filed with the
32 board of industrial insurance appeals, Olympia(~~:- PROVIDED, That~~)).
33 However, a department order or decision making demand, whether with or
34 without penalty, for repayment of sums paid to a provider of medical,
35 dental, vocational, or other health services rendered to an
36 industrially injured worker, shall state that such order or decision
37 shall become final within twenty days from the date the order or

1 decision is communicated to the parties unless a written request for
2 reconsideration is filed with the department of labor and industries,
3 Olympia, or an appeal is filed with the board of industrial insurance
4 appeals, Olympia.

5 (2) Except as provided in RCW 51.32.095, 51.36.010, and 51.36.020,
6 whenever the department or self-insurer has taken any action or made
7 any decision relating to any phase of the administration of this title
8 the worker, beneficiary, employer, or other person aggrieved thereby
9 may request reconsideration (~~(of the department,)~~) or may appeal to the
10 board. In an appeal before the board, the appellant shall have the
11 burden of proceeding with the evidence to establish a prima facie case
12 for the relief sought in such appeal(~~(: PROVIDED, That)~~). Provided,
13 in an appeal from an order of the department that alleges willful
14 misrepresentation, the department or self-insured employer shall
15 initially introduce all evidence in its case in chief. Any such person
16 aggrieved by the decision and order of the board may thereafter appeal
17 to the superior court, as prescribed in this chapter.

18 (3) Except as provided in RCW 51.32.095, 51.36.010, and 51.36.020,
19 if the department is requested to reconsider an order issued by a self-
20 insurer, the department shall promptly request the file from the self-
21 insurer. The department must issue an order affirming, modifying,
22 reversing, or remanding the order within sixty days of receipt of the
23 file from the self-insurer. However, for good cause, the department
24 may once extend the time for issuing an order for an additional ninety
25 days. If the department fails to issue an order within the time frames
26 specified in this section, the self-insurer's order is deemed affirmed,
27 subject to appeal. Upon receipt of the file in a request for
28 reconsideration, the department shall notify all parties of the dates
29 the department received the request and file, respectively, and the
30 date upon which the self-insurer's order will be deemed affirmed if the
31 department fails to take action. The notice shall also inform the
32 parties that any appeal pursuant to RCW 51.52.060 must be filed within
33 sixty days from the date the order is deemed affirmed. If such appeal
34 is filed, the department may not direct submission of further evidence
35 under RCW 51.52.060.

36 **Sec. 54.** RCW 51.52.060 and 1995 c 253 s 1 and 1995 c 199 s 7 are
37 each reenacted and amended to read as follows:

1 (1)(a) Except as otherwise specifically provided in this section,
2 a worker, beneficiary, employer, health services provider, or other
3 person aggrieved by an order, decision, or award of the department or
4 self-insurer must, before he or she appeals to the courts, file with
5 the board and the director, by mail or personally, and in cases
6 involving a self-insurer, with the self-insurer, within sixty days from
7 the day on which a copy of the order, decision, or award was
8 communicated to such person, a notice of appeal to the board. However,
9 a health services provider or other person aggrieved by a department
10 order or decision making demand, whether with or without penalty,
11 solely for repayment of sums paid to a provider of medical, dental,
12 vocational, or other health services rendered to an industrially
13 injured worker must, before he or she appeals to the courts, file with
14 the board and the director, by mail or personally, within twenty days
15 from the day on which a copy of the order or decision was communicated
16 to the health services provider upon whom the department order or
17 decision was served, a notice of appeal to the board.

18 (b) Failure to file a notice of appeal with ~~((both))~~ the board
19 ~~((and))~~, the department, and the self-insurer, if applicable, shall not
20 be grounds for denying the appeal if the notice of appeal is filed with
21 ~~((either))~~ the board ~~((or))~~, the department, or the self-insurer. If
22 the notice of appeal does not demonstrate, on its face, that it was
23 sent to the department, the board, and the self-insurer, if applicable,
24 the recipient shall forward a copy of the notice to the other parties
25 not served.

26 (2) Within ten days of the date on which an appeal has been granted
27 by the board, the board shall notify the other interested parties to
28 the appeal of the receipt of the appeal and shall forward a copy of the
29 notice of appeal to the other interested parties. Within twenty days
30 of the receipt of such notice of the board, the worker or the employer
31 may file with the board a cross-appeal from the order ~~((of the~~
32 ~~department))~~ from which the original appeal was taken.

33 (3) If within the time limited for filing a notice of appeal to the
34 board from an order, decision, or award ~~((of the department))~~, the
35 department directs the submission of further evidence or the
36 investigation of any further fact, the time for filing the notice of
37 appeal shall not commence to run until the person has been advised in
38 writing of the final decision of the department in the matter. In the

1 event the department directs the submission of further evidence or the
2 investigation of any further fact, as provided in this section, the
3 department shall render a final order, decision, or award within ninety
4 days from the date further submission of evidence or investigation of
5 further fact is ordered which time period may be extended by the
6 department for good cause stated in writing to all interested parties
7 for an additional ninety days.

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

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

11 (b)(i) Except as provided in (b)(ii) of this subsection, hold an
12 order, decision, or award in abeyance for a period of ninety days which
13 time period may be extended by the department for good cause stated in
14 writing to all interested parties for an additional ninety days pending
15 further investigation in light of the allegations of the notice of
16 appeal; or

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

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

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

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

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

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

1 **Sec. 55.** RCW 51.52.070 and 1977 ex.s. c 350 s 77 are each amended
2 to read as follows:

3 The notice of appeal to the board shall set forth in full detail
4 the grounds upon which the person appealing considers such order,
5 decision, or award is unjust or unlawful, and shall include every issue
6 to be considered by the board, and it must contain a detailed statement
7 of facts upon which such worker, beneficiary, employer, or other person
8 relies in support thereof. The worker, beneficiary, employer, or other
9 person shall be deemed to have waived all objections or irregularities
10 concerning the matter on which such appeal is taken other than those
11 specifically set forth in such notice of appeal or appearing in the
12 records of the department or self-insurer. The department or self-
13 insurer shall promptly transmit its original record, or a legible copy
14 thereof produced by mechanical, photographic, or electronic means, in
15 such matter to the board.

16 **Sec. 56.** RCW 51.52.080 and 1971 ex.s. c 289 s 69 are each amended
17 to read as follows:

18 If the notice of appeal raises no issue or issues of fact and the
19 board finds that the department or self-insurer properly and lawfully
20 decided all matters raised by such appeal it may, without further
21 hearing, deny the same and confirm the ((department's)) decision or
22 award, or if the ((department's)) record sustains the contention of the
23 person appealing to the board, it may, without further hearing, allow
24 the relief asked in such appeal; otherwise, it shall grant the appeal.

25 NEW SECTION. **Sec. 57.** A new section is added to chapter 51.14 RCW
26 to read as follows:

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

30 NEW SECTION. **Sec. 58.** RCW 51.32.190 (Self-insurers--Notice of
31 denial of claim, reasons--Procedure--Powers and duties of director) and
32 1996 c 58 s 2, 1982 1st ex.s. c 20 s 3, 1977 ex.s. c 350 s 54, 1972
33 ex.s. c 43 s 25, & 1971 ex.s. c 289 s 47 are each repealed.

1 NEW SECTION. **Sec. 59.** This act applies to all pending claims and
2 claims for which an application to reopen pursuant to RCW 51.32.160 is
3 filed or pending on or after January 1, 2007, regardless of the date of
4 injury or the date a claim is presented.

5 NEW SECTION. **Sec. 60.** This act takes effect January 1, 2007,
6 except for the following:

7 (1) Sections 3, 19, 21, 23, 26, 32, 36, 43, and 47 of this act take
8 effect June 30, 2007.

9 (2) Section 51 of this act takes effect December 31, 2011.

10 NEW SECTION. **Sec. 61.** (1) Sections 2, 18, 20, 22, 25, 31, 35, 42,
11 and 46 of this act expire June 30, 2007.

12 (2) Section 50 of this act expires December 31, 2011.

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