

**E2SHB 3139** - S COMM AMD

By Committee on Labor, Commerce, Research & Development

NOT ADOPTED 03/07/2008

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 51.52.050 and 2004 c 243 s 8 are each amended to read  
4 as follows:

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

26 (2)(a) Whenever the department has taken any action or made any  
27 decision relating to any phase of the administration of this title the  
28 worker, beneficiary, employer, or other person aggrieved thereby may  
29 request reconsideration of the department, or may appeal to the board.

1 In an appeal before the board, the appellant shall have the burden of  
2 proceeding with the evidence to establish a prima facie case for the  
3 relief sought in such appeal(~~(:—PROVIDED, That)~~).

4 (b) An order by the department awarding benefits shall become  
5 effective and benefits due on the date issued. Subject to (b)(i) and  
6 (ii) of this subsection, if the department order is appealed the order  
7 shall not be stayed pending a final decision on the merits unless  
8 ordered by the board. Upon issuance of the order granting the appeal,  
9 the board will provide the worker with notice concerning the potential  
10 of an overpayment of benefits paid pending the outcome of the appeal  
11 and the requirements for interest on unpaid benefits pursuant to RCW  
12 51.52.135. A worker may request that benefits cease pending appeal at  
13 any time following the employer's motion for stay or the board's order  
14 granting appeal. The request must be submitted in writing to the  
15 employer, the board, and the department. Any employer may move for a  
16 stay of the order on appeal, in whole or in part. The motion must be  
17 filed within fifteen days of the order granting appeal. The board  
18 shall conduct an expedited review of the claim file provided by the  
19 department as it existed on the date of the department order. The  
20 board shall issue a final decision within twenty-five days of the  
21 filing of the motion for stay or the order granting appeal, whichever  
22 is later. The board's final decision may be appealed to superior court  
23 in accordance with RCW 51.52.110. The board shall grant a motion to  
24 stay if the moving party demonstrates that it is more likely than not  
25 to prevail on the facts as they existed at the time of the order on  
26 appeal. The board shall not consider the likelihood of recoupment of  
27 benefits as a basis to grant or deny a motion to stay.

28 (i) If upon reconsideration requested by a worker or medical  
29 provider, the department has ordered an increase in a permanent partial  
30 disability award from the amount reflected in an earlier order, the  
31 award reflected in the earlier order shall not be stayed pending a  
32 final decision on the merits. However, the increase is stayed without  
33 further action by the board pending a final decision on the merits.

34 (ii) If any party appeals an order establishing a worker's wages or  
35 the compensation rate at which a worker will be paid temporary or  
36 permanent total disability or loss of earning power benefits, the  
37 worker shall receive payment pending a final decision on the merits  
38 based on the following:

1       (A) When the employer is self-insured, the wage calculation or  
2 compensation rate the employer most recently submitted to the  
3 department; or

4       (B) When the employer is insured through the state fund, the  
5 highest wage amount or compensation rate uncontested by the parties.

6       Payment of benefits or consideration of wages at a rate that is  
7 higher than that specified in (b)(ii)(A) or (B) of this subsection is  
8 stayed without further action by the board pending a final decision on  
9 the merits.

10       (c) In an appeal from an order of the department that alleges  
11 willful misrepresentation, the department or self-insured employer  
12 shall initially introduce all evidence in its case in chief. Any such  
13 person aggrieved by the decision and order of the board may thereafter  
14 appeal to the superior court, as prescribed in this chapter.

15       **Sec. 2.** RCW 51.32.240 and 2004 c 243 s 7 are each amended to read  
16 as follows:

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

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

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

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

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

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

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

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

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

1 recoupment may be made from any future payments due to the recipient on  
2 any claim (~~with the state fund or self insurer, as the case may be~~)  
3 whether state funded or self-insured.

4 (b) The department shall establish procedures by rule to collect  
5 information concerning self-insured claim overpayments resulting from  
6 decisions of the board or court, and to recoup such overpayments from  
7 state fund claims. If recovery is made in whole or in part on behalf  
8 of a self-insurer from a worker's state fund claim, the amount  
9 recovered shall be paid to the self-insurer by the department. The  
10 department may provide overpayment information to a self-insurer when  
11 the worker is entitled to benefits from which the self-insurer can  
12 collect the amount due, in whole or in part, on behalf of the  
13 department or another self-insurer. In these cases, the self-insurer  
14 shall pay directly to the department any amounts recovered. The  
15 department shall credit the amounts recovered to the appropriate  
16 workers' compensation funds or shall forward any amounts collected on  
17 behalf of another self-insurer, as the case may be.

18 (c) For purposes of this subsection, "recipient" does not include  
19 health service providers whose treatment or services were authorized by  
20 the department or self-insurer.

21 (d) The department or self-insurer may recover overpayments for  
22 health services from any entity that provided health insurance to the  
23 worker to the extent that the health insurance entity would have  
24 provided health insurance benefits but for workers' compensation  
25 coverage.

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

31 (5)(a) Whenever any payment of benefits under this title has been  
32 induced by willful misrepresentation the recipient thereof shall repay  
33 any such payment together with a penalty of fifty percent of the total  
34 of any such payments and the amount of such total sum may be recouped  
35 from any future payments due to the recipient on any claim with the  
36 state fund or self-insurer against whom the willful misrepresentation  
37 was committed, as the case may be, and the amount of such penalty shall

1 be placed in the supplemental pension fund. Such repayment or  
2 recoupment must be demanded or ordered within three years of the  
3 discovery of the willful misrepresentation.

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

8 (i) Willful false statement; or

9 (ii) Willful misrepresentation, omission, or concealment of any  
10 material fact.

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

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

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

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

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

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

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

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

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

24 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.52 RCW  
25 to read as follows:

26 (1) The department shall study appeals of workers' compensation  
27 cases and collect information on the impacts of this act on state fund  
28 and self-insured workers and employers. The study shall consider the  
29 types of benefits that may be paid pending an appeal, and shall  
30 include, but not be limited to:

31 (a) The frequency and outcomes of appeals;

32 (b) The duration of appeals and any procedural or process changes  
33 made by the board to implement this act and expedite the process;

34 (c) The number of and amount of overpayments resulting from  
35 decisions of the board or court; and

36 (d) The processes used and efforts made to recoup overpayments and  
37 the results of those efforts.

1 (2) State fund and self-insured employers shall provide the  
2 information requested by the department to conduct the study.

3 (3) The department shall report to the workers' compensation  
4 advisory committee by July 1, 2009, on the preliminary results of the  
5 study. By December 1, 2009, and annually thereafter, with the final  
6 report due by December 1, 2011, the department shall report to the  
7 workers' compensation advisory committee and the appropriate committees  
8 of the legislature on the results of the study. The workers'  
9 compensation advisory committee shall provide its recommendations for  
10 addressing overpayments resulting from this act, including the need for  
11 and ability to fund a permanent method to reimburse employer and state  
12 fund overpayment costs.

13 NEW SECTION. **Sec. 4.** Section 2 of this act takes effect July 1,  
14 2009.

15 NEW SECTION. **Sec. 5.** This act applies to orders issued on or  
16 after the effective date of this section."

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**NOT ADOPTED 03/07/2008**

17 On page 1, line 1 of the title, after "appeal;" strike the  
18 remainder of the title and insert "amending RCW 51.52.050 and  
19 51.32.240; adding a new section to chapter 51.52 RCW; creating a new  
20 section; and providing an effective date."

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