

E2SHB 3139 - S AMD TO LCRD COMM AMD (S-5930.1/08) **228**

By Senators Murray, McAuliffe, Hobbs, Marr, Berkey, Rasmussen, Rockefeller, Eide, Holmquist, Haugen, Shin, Kilmer, and Kastama

PULLED 03/07/2008

1 On page 2, line 27 of the amendment, after "stay." insert "If a
2 self-insured employer prevails on the merits, any benefits paid may be
3 recouped pursuant to RCW 51.32.240."

4 Beginning on page 3, line 15 of the amendment, strike all of
5 section 2 and insert the following:

6 "**Sec. 2.** 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 may only assess an overpayment of benefits
21 because of adjudicator error when the order upon which the overpayment
22 is based is not yet final as provided in RCW 51.52.050 and 51.52.060.
23 "Adjudicator error" includes the failure to consider information in the
24 claim file, failure to secure adequate information, or an error in
25 judgment.

26 (c) 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 or her discretion to waive, in whole or in part,

1 the amount of any such timely claim where the recovery would be against
2 equity and good conscience.

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

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

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

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

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

1 (~~with the state fund or self-insurer, as the case may be~~) whether
2 state fund or self-insured.

3 (a) The director, pursuant to rules adopted in accordance with the
4 procedures provided in the administrative procedure act, chapter 34.05
5 RCW, may exercise (~~his~~) discretion to waive, in whole or in part, the
6 amount of any such payments where the recovery would be against equity
7 and good conscience. However, if the director waives in whole or in
8 part any such payments due a self-insurer, the self-insurer shall be
9 reimbursed the amount waived from the self-insured employer overpayment
10 reimbursement fund.

11 (b) The department shall collect information regarding self-insured
12 claim overpayments resulting from final decisions of the board and the
13 courts, and recoup such overpayments on behalf of the self-insurer from
14 any open, new, or reopened state fund or self-insured claims. The
15 department shall forward the amounts collected to the self-insurer to
16 whom the payment is owed. The department may provide information as
17 needed to any self-insurers from whom payments may be collected on
18 behalf of the department or another self-insurer. Notwithstanding RCW
19 51.32.040, any self-insurer requested by the department to forward
20 payments to the department pursuant to this subsection shall pay the
21 department directly. The department shall credit the amounts recovered
22 to the appropriate fund, or forward amounts collected to the
23 appropriate self-insurer, as the case may be.

24 (c) If a self-insurer is not fully reimbursed within twenty-four
25 months of the final decision of the board or court through the
26 collection process pursuant to this subsection and by means of
27 processes pursuant to subsection (6) of this section, the self-insurer
28 shall be reimbursed for the remainder of the amount due from the self-
29 insured employer overpayment reimbursement fund.

30 (d) This act is null and void unless sections 3 and 4 of this act
31 are enacted.

32 (5)(a) Whenever any payment of benefits under this title has been
33 induced by willful misrepresentation the recipient thereof shall repay
34 any such payment together with a penalty of fifty percent of the total
35 of any such payments and the amount of such total sum may be recouped
36 from any future payments due to the recipient on any claim with the
37 state fund or self-insurer against whom the willful misrepresentation
38 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 On page 8, after line 23 of the amendment, insert the following:

25 "NEW SECTION. **Sec. 3.** A new section is added to chapter 51.32 RCW
26 to read as follows:

27 (1) Except as provided in subsection (2) of this section, each
28 self-insured employer shall retain from the earnings of each of its
29 workers that amount as shall be fixed from time to time by the
30 director, the basis for measuring said amount to be determined by the
31 director. These moneys shall only be retained from employees and
32 remitted to the department in such manner and at such intervals as the
33 department directs and shall be placed in the self-insured employer
34 overpayment reimbursement fund. The moneys so collected shall be used
35 exclusively for reimbursement to the accident fund, medical aid fund,
36 reserve fund, and to self-insured employers for benefits overpaid to

1 injured workers during the pendency of board or court appeals in which
2 the self-insured employer prevails, and shall be no more than necessary
3 to make such payments on a current basis.

4 (2) None of the amount assessed for the employer overpayment
5 reimbursement fund under this section may be retained from the earnings
6 of workers covered under RCW 51.16.210.

7 NEW SECTION. **Sec. 4.** A new section is added to chapter 54.44 RCW
8 to read as follows:

9 The self-insured employer overpayment reimbursement fund is created
10 in the custody of the state treasurer. Expenditures from the account
11 may be used only for reimbursing self-insured employers for benefits
12 overpaid to injured workers during the pendency of board or court
13 appeals in which the self-insured employer prevails. Only the director
14 or the director's designee may authorize expenditures from the account.
15 The account is subject to allotment procedures under chapter 43.88 RCW,
16 but an appropriation is not required for expenditures."

17 Renumber the remaining sections consecutively and correct any
18 internal references accordingly.

E2SHB 3139 - S AMD TO LCRD COMM AMD (S-5930.1/08)

By Senators Murray, McAuliffe, Hobbs, Marr, Berkey, Rasmussen,
Rockefeller, Eide, Holmquist, Haugen, Shin, Kilmer, and Kastama

PULLED 03/07/2008

19 On page 9, line 19 of the title amendment, after "51.32.240;"
20 insert "adding a new section to chapter 51.32 RCW; adding a new section
21 to chapter 51.44 RCW;"

--- END ---