
SUBSTITUTE HOUSE BILL 2431

State of Washington

62nd Legislature

2012 Regular Session

By House Labor & Workforce Development (originally sponsored by Representatives Reykdal, Appleton, Ladenburg, Green, Ormsby, Moeller, and Kenney)

READ FIRST TIME 01/31/12.

1 AN ACT Relating to claim files and compensation under the
2 industrial insurance laws; amending RCW 51.08.173, 51.14.110,
3 51.32.055, 51.32.195, 51.32.240, and 51.52.120; adding new sections to
4 chapter 51.08 RCW; adding new sections to chapter 51.32 RCW; adding a
5 new section to chapter 51.14 RCW; creating a new section; and
6 prescribing penalties.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.08 RCW
9 to read as follows:

10 A "claim file" means all documents and information regarding the
11 claim or claimant that is under the control of the department, self-
12 insurer, third-party administrator, claims management entity, or self-
13 insurer's representative, as applicable. "Claim file" includes
14 information maintained in an electronic format. "Claim file" includes,
15 but is not limited to, the following: Electronic and other
16 correspondence sent or received, medical treatment records, medical
17 examination reports, records reviews, vocational reports, vocational
18 records, job analyses, all self-insurer forms, investigation requests,
19 investigation reports, claim notes, phone logs, claim costs, requests

1 for benefits, and benefit payment documents and information. This
2 section shall be liberally interpreted to include all records and
3 information available in administering the claim.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 51.32 RCW
5 to read as follows:

6 When the department, employer, or employer's representative
7 conducts, or a third-party administrator or claims management entity
8 initiates, surveillance or other investigation regarding a claimant or
9 beneficiary, all investigation materials and reports become part of the
10 claim file, and must be immediately provided to the claimant or
11 beneficiary, upon any of the following:

- 12 (1) An investigation is closed;
- 13 (2) Information obtained during the investigation is considered or
14 used for any claims management decision; or
- 15 (3) Ten days prior to review by any medical or vocational
16 professional of any information obtained during the investigation.

17 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.08 RCW
18 to read as follows:

19 "Third-party administrator" means any entity that contracts to
20 administer workers' compensation claims for self-insured employers
21 qualified under RCW 51.14.020 and certified pursuant to RCW 51.14.030
22 and is considered to be an employer representative.

23 NEW SECTION. **Sec. 4.** A new section is added to chapter 51.08 RCW
24 to read as follows:

25 "Claims management entity" means any individual designated by a
26 self-insured employer qualified under RCW 51.14.020 and certified
27 pursuant to RCW 51.14.030 to administer workers' compensation claims
28 including self-administered organizations and third-party
29 administrators and is considered to be an employer representative.

30 **Sec. 5.** RCW 51.08.173 and 1983 c 174 s 1 are each amended to read
31 as follows:

32 "Self-insurer" or "self-insured employer" means an employer or
33 group of employers which has been authorized under this title to carry
34 its own liability to its employees covered by this title.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 51.14 RCW
2 to read as follows:

3 (1) When issuing a payment to an injured worker or beneficiary, the
4 self-insurer shall simultaneously provide written notice identifying
5 the specific type of benefit being paid or other specific purpose of
6 the payment.

7 (2) When issuing payments of temporary total disability benefits as
8 provided in RCW 51.32.090, the self-insurer shall provide written
9 notice to the injured worker of the time period the payment covers, the
10 daily rate of the payment, and the department claim number under which
11 the benefits are being paid. Any change in the rate of temporary total
12 disability benefits shall be accompanied by written notice of the
13 change and the reason for the change.

14 (3) When issuing payments of temporary partial disability benefits
15 as provided in RCW 51.32.090, the self-insurer shall provide written
16 notice to the injured worker of the time period the payment covers, the
17 full manner in which the payment was calculated, and the department
18 claim number under which the benefits are being paid. Any change in
19 the value of the worker's earning power at the time of injury utilized
20 to calculate temporary partial disability benefits shall be accompanied
21 by written notice regarding the change and the reason for the change.

22 (4) Failure of a self-insurer to comply with this section subjects
23 the self-insurer to a penalty under RCW 51.48.080. The director shall
24 issue an order determining whether a violation has occurred within
25 thirty days of a request by an injured worker.

26 **Sec. 7.** RCW 51.14.110 and 2005 c 145 s 2 are each amended to read
27 as follows:

28 (1) Every self-insurer shall maintain a record of all payments (~~of~~
29 ~~compensation~~) made under this title(~~(-)~~) to workers, beneficiaries,
30 medical providers, and other persons or entities. Every self-insurer
31 shall also maintain a record of all requests for benefits or other
32 payments submitted pursuant to this title. This information is part of
33 the claim file.

34 (2) In the event of a disputed claim, an audit by the department,
35 or a request by the department, the self-insurer shall (~~furnish to the~~
36 ~~director all information the self-insurer has in its possession as to~~
37 ~~any disputed claim, upon forms approved by the director.~~

1 ~~(2)~~) provide the requested element of the employee's claim file to
2 the department within fifteen days of receipt of the dispute, notice of
3 audit, or department request.

4 (3)(a) The department shall establish an electronic reporting
5 system for the submission to the department of specified self-insurance
6 claims data to more effectively monitor the performance of self-
7 insurers and to obtain claims information in an efficient manner.

8 (b) Self-insurers shall submit claims data electronically in the
9 format and frequency prescribed by the department.

10 (c) Electronic submittal to the department of specified claims data
11 is required to maintain self-insurance certification. The department
12 shall establish an escalating schedule of penalties for noncompliance
13 with this requirement, up to and including withdrawal of self-insurance
14 certification.

15 (d) Claims data reported to the department electronically by
16 individual self-insurers are confidential in accordance with RCW
17 51.16.070 and 51.28.070. The department may publish, for statistical
18 purposes, aggregated claims data that contain no personal identifiers.

19 ~~((3))~~ (4) The department shall adopt rules to administer this
20 section.

21 NEW SECTION. **Sec. 8.** A new section is added to chapter 51.32 RCW
22 to read as follows:

23 (1) When an employer or its representative's third-party
24 administrator, or claims management entity sends a written
25 communication to a current or former treating medical provider, a copy
26 of the correspondence must simultaneously be sent to the claimant or
27 legal representative.

28 (2) When an employer or its representative's third-party
29 administrator, or claims management entity requests a report or other
30 information in writing from a current or former treating medical
31 provider, a copy of the report or other writing must be sent to the
32 claimant within five days of the receipt of the report or other
33 writing.

34 (3) Thirty days or more after a claim has been filed, when an
35 employer or its representative's third-party administrator, or claims
36 management entity schedules a meeting or conversation by any means with
37 a current or former treating medical provider, the employer shall

1 provide written notice of the meeting or conversation to the claimant
2 at least fourteen days prior to the scheduled meeting or conversation.
3 However, if the employer is legitimately offering employment under RCW
4 51.32.090(4), the fourteen day notice requirement does not apply and
5 notice must be provided to the worker contemporaneously with the
6 scheduling of the meeting or conversation. Following the meeting or
7 conversation, a memorandum describing the information given to the
8 provider, the questions asked of the provider, and the responses given
9 by the provider must be sent to the claimant within five days of the
10 meeting or conversation. This information must be provided regardless
11 of the source of the information, any claim of privilege, or attorney
12 work product.

13 **Sec. 9.** RCW 51.32.055 and 2004 c 65 s 8 are each amended to read
14 as follows:

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

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

33 (3) A request for determination of permanent disability shall be
34 examined by the department or, if authorized in subsection (9) of this
35 section, the self-insurer, and the department shall issue an order in
36 accordance with RCW 51.52.050 or, in the case of a self-insured
37 employer, the self-insurer may: (a) Enter a written order,

1 communicated to the worker and the department self-insurance section in
2 accordance with subsection (9) of this section, or (b) request the
3 department to issue an order in accordance with RCW 51.52.050.

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

13 (5) The director may establish a medical bureau within the
14 department to perform medical examinations under this section.
15 Physicians hired or retained for this purpose shall be grounded in
16 industrial medicine and in the assessment of industrial physical
17 impairment. Self-insurers shall bear a proportionate share of the cost
18 of the medical bureau in a manner to be determined by the department.

19 (6) Where a dispute arises from the handling of any claim before
20 the condition of the injured worker becomes fixed, the worker,
21 employer, or self-insurer may request the department to resolve the
22 dispute or the director may initiate an inquiry on his or her own
23 motion. In any claim where the injured worker's condition has become
24 fixed, the worker may request the department issue an order containing
25 a permanent disability determination. In these cases, the department
26 shall proceed as provided in this section and an order shall issue
27 within sixty days of receipt of the request and in accordance with RCW
28 51.52.050.

29 (7)(a) If a claim (i) is accepted by a self-insurer after June 30,
30 1986, and before August 1, 1997, (ii) involves only medical treatment
31 and the payment of temporary disability compensation under RCW
32 51.32.090 or only the payment of temporary disability compensation
33 under RCW 51.32.090, (iii) at the time medical treatment is concluded
34 does not involve permanent disability, (iv) is one with respect to
35 which the department has not intervened under subsection (6) of this
36 section, and (v) the injured worker 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) All determinations of permanent disability for claims accepted
5 under this subsection (7) by self-insurers shall be made by the self-
6 insured section of the department under subsections (1) through (4) of
7 this section.

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

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

36 (b) All determinations of permanent disability for claims accepted
37 under this subsection (8) by self-insurers shall be made by the self-

1 insured section of the department under subsections (1) through (4) of
2 this section.

3 (9)(a) If a claim: (i) Is accepted by a self-insurer after July
4 31, 1997; (ii)(A) involves only medical treatment, or medical treatment
5 and the payment of temporary disability compensation under RCW
6 51.32.090, and a determination of permanent partial disability, if
7 applicable, has been made by the self-insurer as authorized in this
8 subsection; or (B) involves only the payment of temporary disability
9 compensation under RCW 51.32.090 and a determination of permanent
10 partial disability, if applicable, has been made by the self-insurer as
11 authorized in this subsection; (iii) is one with respect to which the
12 department has not intervened under subsection (6) of this section; and
13 (iv) concerns an injured worker who has returned to work with the self-
14 insured employer of record, whether at the worker's previous job or at
15 a job that has comparable wages and benefits, the claim may be closed
16 by the self-insurer, subject to reporting of claims to the department
17 in a manner prescribed by department rules adopted under chapter 34.05
18 RCW.

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

32 (c) Upon closure of a claim under this subsection (9), 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 such medical benefits
37 and temporary disability compensation as provided to date and with such
38 award for permanent partial disability, if any, as set forth below, and

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

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

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

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

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

34 **Sec. 10.** RCW 51.32.195 and 1987 c 290 s 1 are each amended to read
35 as follows:

36 On any industrial injury claim where ((the)) a self-insured
37 employer or injured worker has requested a determination by the

1 department, the self-insurer must submit (~~all medical reports and any~~
2 ~~other specified information not previously submitted~~) the claim file
3 to the department. If the self-insured employer requests a
4 determination by the department, it shall submit the claim file with
5 its request. If the injured worker requests a determination by the
6 department, the self-insured employer shall submit the claim file to
7 the department within fifteen working days of receiving notice of the
8 worker's request. When the department requests information from a
9 self-insurer by certified mail, the self-insurer shall submit (~~all~~
10 ~~information in its possession concerning a claim~~) the claim file or
11 other information within ten working days from the date of receipt of
12 such certified notice.

13 **Sec. 11.** RCW 51.32.240 and 2011 c 290 s 6 are each amended to read
14 as follows:

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

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

33 (c) The director, pursuant to rules adopted in accordance with the
34 procedures provided in the administrative procedure act, chapter 34.05
35 RCW, may exercise his or her discretion to waive, in whole or in part,
36 the amount of any such timely claim where the recovery would be against
37 equity and good conscience.

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

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

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

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

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

37 (a) The director, pursuant to rules adopted in accordance with the
38 procedures provided in the administrative procedure act, chapter 34.05

1 RCW, may exercise discretion to waive, in whole or in part, the amount
2 of any such payments where the recovery would be against equity and
3 good conscience. However, if the director waives in whole or in part
4 any such payments due a self-insurer, the self-insurer shall be
5 reimbursed the amount waived from the self-insured employer overpayment
6 reimbursement fund.

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

20 (c) If a self-insurer is not fully reimbursed within twenty-four
21 months of the first attempt at recovery through the collection process
22 pursuant to this subsection and by means of processes pursuant to
23 subsection (6) of this section, the self-insurer shall be reimbursed
24 for the remainder of the amount due from the self-insured employer
25 overpayment reimbursement fund.

26 (d) For purposes of this subsection, "recipient" does not include
27 health service providers whose treatment or services were authorized by
28 the department or self-insurer.

29 (e) The department or self-insurer shall first attempt recovery of
30 overpayments for health services from any entity that provided health
31 insurance to the worker to the extent that the health insurance entity
32 would have provided health insurance benefits but for workers'
33 compensation coverage.

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

1 state fund or self-insurer against whom the willful misrepresentation
2 was committed, as the case may be, and the amount of such penalty shall
3 be placed in the supplemental pension fund. Such repayment or
4 recoupment must be demanded or ordered within three years of the
5 discovery of the willful misrepresentation.

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

10 (i) Willful false statement; or

11 (ii) Willful misrepresentation, omission, or concealment of any
12 material fact.

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

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

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

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

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

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

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

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

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

26 (8) Any order assessing an overpayment must specifically itemize
27 each overpayment which may result, including the manner in which the
28 overpayment will be calculated. If the information is not identified
29 in the order, any subsequent overpayment based on the deficient order
30 is deemed waived. Such an order is subject to RCW 51.52.050. This
31 subsection does not apply to overpayments issued pursuant to RCW
32 51.32.220.

33 **Sec. 12.** RCW 51.52.120 and 2011 1st sp.s. c 37 s 304 are each
34 amended to read as follows:

35 (1) Except for claim resolution structured settlement agreements,
36 it shall be unlawful for an attorney engaged in the representation of
37 any worker or beneficiary to charge for services in the department any

1 fee in excess of a reasonable fee, of not more than thirty percent of
2 the increase in the award secured by the attorney's services. Such
3 reasonable fee shall be fixed by the director or the director's
4 designee for services performed by an attorney for such worker or
5 beneficiary, if written application therefor is made by the attorney,
6 worker, or beneficiary within one year from the date the final decision
7 and order of the department is communicated to the party making the
8 application.

9 (2) If, on appeal to the board, the order, decision, or award of
10 the department is reversed or modified and additional relief is granted
11 to a worker or beneficiary, or in cases where a party other than the
12 worker or beneficiary is the appealing party and the worker's or
13 beneficiary's right to relief is sustained by the board, the board
14 shall fix a reasonable fee for the services of his or her attorney in
15 proceedings before the board if written application therefor is made by
16 the attorney, worker, or beneficiary within one year from the date the
17 final decision and order of the board is communicated to the party
18 making the application. In fixing the amount of such attorney's fee,
19 the board shall take into consideration the fee allowed, if any, by the
20 director, for services before the department, and the board may review
21 the fee fixed by the director. Any attorney's fee set by the
22 department or the board may be reviewed by the superior court upon
23 application of such attorney, worker, or beneficiary. The department
24 or self-insured employer, as the case may be, shall be served a copy of
25 the application and shall be entitled to appear and take part in the
26 proceedings. Where the board, pursuant to this section, fixes the
27 attorney's fee, it shall be unlawful for an attorney to charge or
28 receive any fee for services before the board in excess of that fee
29 fixed by the board.

30 (3) For claim resolution structured settlement agreements, fees for
31 attorney services are limited to fifteen percent of the total amount to
32 be paid to the worker after the agreement becomes final. The board
33 will also decide on any disputes as to attorneys' fees for services
34 related to claim resolution structured settlement agreements consistent
35 with the procedures in subsection (2) of this section.

36 (4) If, on appeal to the board from a decision or order of the
37 department denying the reopening of a claim previously resolved with a
38 structured settlement agreement, the decision is reversed or modified

1 and the relief sought by the claimant is fully or partially awarded, a
2 reasonable fee for the services of the worker's attorney shall be fixed
3 by the board, and the board shall order reimbursement for all
4 reasonable costs of litigation, including but not limited to fees of
5 the medical and other witnesses. In cases of self-insured employers,
6 the attorney fees fixed by the board and the costs set by the board
7 shall be payable directly by the self-insured employer. In all other
8 cases, the fees and costs shall be paid by the department out of the
9 appropriated funds.

10 (5) In an appeal to the board involving the presumption established
11 under RCW 51.32.185, the attorney's fee shall be payable as set forth
12 under RCW 51.32.185.

13 ((+5)) (6) Any person who violates this section is guilty of a
14 misdemeanor.

15 NEW SECTION. Sec. 13. This act applies to all claims open after
16 January 1, 2013.

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