

SHB 2409 - H AMD 1562

By Representative Graham

WITHDRAWN 02/18/2020

1 On page 4, after line 33, insert the following:

2

3 **"Sec. 10.** RCW 51.32.240 and 2011 c 290 s 6 are each amended to
4 read as follows:

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

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

23 (c) The director, pursuant to rules adopted in accordance with
24 the procedures provided in the administrative procedure act, chapter
25 34.05 RCW, may exercise his or her discretion to waive, in whole or
26 in part, the amount of any such timely claim where the recovery
27 would be against equity and good conscience.

1 (2) Whenever the department or self-insurer fails to pay
2 benefits 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
5 benefits to be paid from the state fund or by the self-insurer, as
6 the case may be, subject to the following:

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

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

16 "Adjudicator error" includes the failure to consider information in
17 the claim file, failure to secure adequate information, or an error
18 in judgment.

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

31 (4) Whenever any payment of benefits under this title has been
32 made pursuant to an adjudication by the department or by order of
33 the board or any court and timely appeal therefrom has been made
34 where the final decision is that any such payment was made pursuant

1 to an erroneous adjudication, the recipient thereof shall repay it
2 and recoupment may be made from any future payments due to the
3 recipient on any claim whether state fund or self-insured.

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

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

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

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

1 (e) The department or self-insurer shall first attempt recovery
2 of overpayments for health services from any entity that provided
3 health insurance to the worker to the extent that the health
4 insurance entity would have provided health insurance benefits but
5 for workers' compensation coverage.

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

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

21 (i) Willful false statement; or

22 (ii) Willful misrepresentation, omission, or concealment of any
23 material fact.

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

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

31 (e) For purposes of this subsection (5), a material fact is one
32 which would result in additional, increased, or continued benefits,
33 including but not limited to facts about physical restrictions, or
34 work-type activities which either result in wages or income or would

1 be reasonably expected to do so. Wages or income include the receipt
2 of any goods or services. For a work-type activity to be reasonably
3 expected to result in wages or income, a pattern of repeated
4 activity must exist. For those activities that would reasonably be
5 expected to result in wages or produce income, but for which actual
6 wage or income information cannot be reasonably determined, the
7 department shall impute wages pursuant to RCW 51.08.178(4).

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

1 unsatisfied. The clerk of the court shall be entitled to a filing
2 fee under RCW 36.18.012(10), which shall be added to the amount of
3 the warrant. A copy of such warrant shall be mailed to the worker,
4 beneficiary, or other person within three days of filing with the
5 clerk.

6 The director, director's designee, or self-insurer may issue to
7 any person, firm, corporation, municipal corporation, political
8 subdivision of the state, public corporation, or agency of the
9 state, a notice to withhold and deliver property of any kind if
10 there is reason to believe that there is in the possession of such
11 person, firm, corporation, municipal corporation, political
12 subdivision of the state, public corporation, or agency of the
13 state, property that is due, owing, or belonging to any worker,
14 beneficiary, or other person upon whom a warrant has been served for
15 payments due the department or self-insurer. The notice and order to
16 withhold and deliver shall be served by a method for which receipt
17 can be confirmed or tracked accompanied by an affidavit of service
18 by mailing or served by the sheriff of the county, or by the
19 sheriff's deputy, or by any authorized representative of the
20 director, director's designee, or self-insurer. Any person, firm,
21 corporation, municipal corporation, political subdivision of the
22 state, public corporation, or agency of the state upon whom service
23 has been made shall answer the notice within twenty days exclusive
24 of the day of service, under oath and in writing, and shall make
25 true answers to the matters inquired or in the notice and order to
26 withhold and deliver. In the event there is in the possession of the
27 party named and served with such notice and order, any property that
28 may be subject to the claim of the department or self-insurer, such
29 property shall be delivered forthwith to the director, the
30 director's authorized representative, or self-insurer upon demand.
31 If the party served and named in the notice and order fails to
32 answer the notice and order within the time prescribed in this
33 section, the court may, after the time to answer such order has
34 expired, render judgment by default against the party named in the

1 notice for the full amount, plus costs, claimed by the director,
2 director's designee, or self-insurer in the notice. In the event
3 that a notice to withhold and deliver is served upon an employer and
4 the property found to be subject thereto is wages, the employer may
5 assert in the answer all exemptions provided for by chapter 6.27 RCW
6 to which the wage earner may be entitled.

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

11 (7) Orders assessing an overpayment which are issued on or after
12 July 28, 1991, shall include a conspicuous notice of the collection
13 methods available to the department or self-insurer."
14

15 Renumber the remaining sections consecutively and correct any
16 internal references accordingly.

17

18 Correct the title.

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EFFECT: Increases the penalty for receipt of workers'
compensation benefits due to willful misrepresentation from fifty
percent to sixty percent of total benefit payments.

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