
HOUSE BILL 1920

State of Washington 52nd Legislature 1991 Regular Session

By Representatives Heavey and Cole.

Read first time February 14, 1991. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to employer obligations for providing industrial
2 insurance; amending RCW 51.04.110, 51.04.120, 51.16.060, 51.16.105,
3 51.16.120, 51.16.140, 51.24.030, 51.24.050, 51.24.060, 51.24.070,
4 51.24.080, 51.24.090, 51.28.030, 51.28.055, 51.32.055, 51.32.073,
5 51.32.075, 51.32.095, 51.32.110, 51.32.112, 51.32.114, 51.32.160,
6 51.32.220, 51.32.240, 51.36.010, 51.36.020, 51.36.050, 51.36.060,
7 51.36.070, 51.44.040, 51.44.070, 51.48.050, 51.52.050, 51.52.110,
8 51.52.120, and 51.52.130; adding a new section to chapter 51.28 RCW;
9 adding a new section to chapter 51.98 RCW; repealing RCW 51.14.010,
10 51.14.020, 51.14.030, 51.14.040, 51.14.050, 51.14.060, 51.14.070,
11 51.14.073, 51.14.077, 51.14.080, 51.14.090, 51.14.095, 51.14.100,
12 51.14.110, 51.14.150, 51.14.160, 51.32.190, 51.32.195, 51.32.200,
13 51.36.085, 51.44.140, 51.44.150, 51.48.017, and 51.48.110; prescribing
14 penalties; and providing an effective date.

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

1 **Sec. 1.** RCW 51.04.110 and 1982 c 109 s 2 are each amended to read
2 as follows:

3 The director shall appoint a workers' compensation advisory
4 committee composed of ten members: (~~Three~~) Four representing subject
5 workers, (~~three~~) four representing subject employers, (~~one~~
6 ~~representing self-insurers, one representing workers of self-~~
7 ~~insurers,~~) and two ex officio members, without a vote, one of whom
8 shall be the chairman of the board of industrial appeals and the other
9 the representative of the department. The member representing the
10 department shall be chairman. This committee shall conduct a
11 continuing study of any aspects of workers' compensation as the
12 committee shall determine require their consideration. The committee
13 shall report its findings to the department or the board of industrial
14 insurance appeals for such action as deemed appropriate. The members
15 of the committee shall be appointed for a term of three years
16 commencing on July 1, 1971 and the terms of the members representing
17 the workers and employers shall be staggered so that the director shall
18 designate one member from each such group initially appointed whose
19 term shall expire on June 30, 1972 and one member from each such group
20 whose term shall expire on June 30, 1973. The members shall serve
21 without compensation, but shall be entitled to travel expenses as
22 provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter
23 amended. The committee may hire such experts, if any, as it shall
24 require to discharge its duties, and may utilize such personnel and
25 facilities of the department and board of industrial insurance appeals
26 as it shall need without charge. All expenses of this committee shall
27 be paid by the department.

28 **Sec. 2.** RCW 51.04.120 and 1986 c 9 s 1 are each amended to read as
29 follows:

1 Every employer under this title shall secure the payment of
2 compensation under this title by insuring and keeping insured the
3 payment of benefits with the state fund. Any employer (~~other than a~~
4 ~~self-insurer~~) subject to this title shall, under such rules as the
5 department shall prescribe, apply for and obtain from the department a
6 certificate of coverage. The certificate shall be personal and
7 nontransferable and shall be valid as long as the employer continues in
8 business and pays the taxes due the state. In case the employer
9 maintains more than one place of business, a separate certificate of
10 coverage for each place at which business is transacted shall be
11 required. Each certificate shall be numbered and shall show the name,
12 residence, and place and character of business of the employer and such
13 other information as the department deems necessary and shall be posted
14 conspicuously at the place of business for which it is issued. Where
15 a place of business of the employer is changed, the employer must
16 notify the department within thirty days of the new address and a new
17 certificate shall be issued for the new place of business. No employer
18 may engage in any business for which taxes are due under this title
19 without having a certificate of coverage in compliance with this
20 section, except that the department, by general rule, may provide for
21 the issuance of a certificate of coverage to employers with temporary
22 places of business.

23 **Sec. 3.** RCW 51.16.060 and 1985 c 315 s 1 are each amended to read
24 as follows:

25 Every employer (~~not qualifying as a self-insurer,~~) shall insure
26 with the state and shall, on or before the last day of January, April,
27 July and October of each year thereafter, furnish the department with
28 a true and accurate payroll for the period in which workers were
29 employed by it during the preceding calendar quarter, the total amount

1 paid to such workers during such preceding calendar quarter, and a
2 segregation of employment in the different classes established pursuant
3 to this title, and shall pay its premium thereon to the appropriate
4 fund. Premiums for a calendar quarter, whether reported or not, shall
5 become due and delinquent on the day immediately following the last day
6 of the month following the calendar quarter. The sufficiency of such
7 statement shall be subject to the approval of the director: PROVIDED,
8 That the director may in his or her discretion and for the effective
9 administration of this title require an employer in individual
10 instances to furnish a supplementary report containing the name of each
11 individual worker, his or her hours worked, his or her rate of pay and
12 the class or classes in which such work was performed: PROVIDED
13 FURTHER, That in the event an employer shall furnish the department
14 with four consecutive quarterly reports wherein each such quarterly
15 report indicates that no premium is due the department may close the
16 account: PROVIDED FURTHER, That the department may promulgate rules
17 and regulations in accordance with chapter 34.05 RCW to establish other
18 reporting periods and payment due dates in lieu of reports and payments
19 following each calendar quarter, and may also establish terms and
20 conditions for payment of premiums and assessments based on estimated
21 payrolls, with such payments being subject to approval as to
22 sufficiency of the estimated payroll by the department, and also
23 subject to appropriate periodic adjustments made by the department
24 based on actual payroll: AND PROVIDED FURTHER, That a temporary help
25 company which provides workers on a temporary basis to its customers
26 shall be considered the employer for purposes of reporting and paying
27 premiums and assessments under this title according to the appropriate
28 rate classifications as determined by the department: PROVIDED, That
29 the employer shall be liable for paying premiums and assessments,

1 should the temporary help company fail to pay the premiums and
2 assessments under this title.

3 **Sec. 4.** RCW 51.16.105 and 1977 ex.s. c 350 s 27 are each amended
4 to read as follows:

5 All expenses of the industrial safety and health division of the
6 department pertaining to workers' compensation shall be paid by the
7 department and financed by premiums (~~and by assessments collected from~~
8 ~~a self-insurer as provided in this title~~)).

9 **Sec. 5.** RCW 51.16.120 and 1984 c 63 s 1 are each amended to read
10 as follows:

11 (1) Whenever a worker has a previous bodily disability from any
12 previous injury or disease, whether known or unknown to the employer,
13 and shall suffer a further disability from injury or occupational
14 disease in employment covered by this title and become totally and
15 permanently disabled from the combined effects thereof or die when
16 death was substantially accelerated by the combined effects thereof,
17 then the experience record of an employer insured with the state fund
18 at the time of said further injury or disease shall be charged and (~~a~~
19 ~~self-insured~~) an employer who was formerly self-insured under this
20 title shall pay directly into the reserve fund only the accident cost
21 which would have resulted solely from said further injury or disease,
22 had there been no preexisting disability, and which accident cost shall
23 be based upon an evaluation of the disability by medical experts. The
24 difference between the charge thus assessed to such employer at the
25 time of said further injury or disease and the total cost of the
26 pension reserve shall be assessed against the second injury fund. The
27 department shall pass upon the application of this section in all cases
28 where benefits are paid for total permanent disability or death and

1 issue an order thereon appealable by the employer. Pending outcome of
2 such appeal the transfer or payment shall be made as required by such
3 order.

4 (2) The department shall, in cases of claims of workers sustaining
5 injuries or occupational diseases in the employ of state fund
6 employers, recompute the experience record of such employers when the
7 claims of workers injured in their employ have been found to qualify
8 for payments from the second injury fund after the regular time for
9 computation of such experience records and the department may make
10 appropriate adjustments in such cases including cash refunds or credits
11 to such employers.

12 (3) To encourage employment of injured workers who are not
13 reemployed by the employer at the time of injury, the department may
14 adopt rules providing for the reduction or elimination of premiums or
15 assessments from subsequent employers of such workers and may also
16 adopt rules for the reduction or elimination of charges against such
17 employers in the event of further injury to such workers in their
18 employ.

19 **Sec. 6.** RCW 51.16.140 and 1989 c 385 s 3 are each amended to read
20 as follows:

21 ~~((1) Every employer who is not a self-insurer shall deduct from~~
22 ~~the pay of each of his or her workers one-half of the amount he or she~~
23 ~~is required to pay, for medical benefits within each risk~~
24 ~~classification. Such amount shall be periodically determined by the~~
25 ~~director and reported by him or her to all employers under this title:~~
26 ~~PROVIDED, That the state governmental unit shall pay the entire amount~~
27 ~~into the medical aid fund for volunteers, as defined in RCW 51.12.035,~~
28 ~~and the state apprenticeship council shall pay the entire amount into~~
29 ~~the medical aid fund for registered apprentices or trainees, for the~~

1 ~~purposes of RCW 51.12.130. The deduction under this section is not~~
2 ~~authorized for premiums assessed under RCW 51.16.210.~~

3 (2)) It shall be unlawful for the employer, unless specifically
4 authorized by this title, to deduct or obtain any part of the premium
5 or other costs required to be by him or her paid from the wages or
6 earnings of any of his or her workers, and the making of or attempt to
7 make any such deduction shall be a gross misdemeanor.

8 **Sec. 7.** RCW 51.24.030 and 1987 c 212 s 1701 are each amended to
9 read as follows:

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

14 (2) In every action brought under this section, the plaintiff shall
15 give notice to the department (~~or self-insurer~~) when the action is
16 filed. The department (~~or self-insurer~~) may file a notice of
17 statutory interest in recovery. When such notice has been filed by the
18 department (~~or self-insurer~~), the parties shall thereafter serve
19 copies of all notices, motions, pleadings, and other process on the
20 department (~~or self-insurer~~). The department (~~or self-insurer~~) may
21 then intervene as a party in the action to protect its statutory
22 interest in recovery.

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

27 (4) Damages recoverable by a worker or beneficiary pursuant to the
28 underinsured motorist coverage of an insurance policy shall be subject

1 to this chapter only if the owner of the policy is the employer of the
2 injured worker.

3 **Sec. 8.** RCW 51.24.050 and 1984 c 218 s 4 are each amended to read
4 as follows:

5 (1) An election not to proceed against the third person operates as
6 an assignment of the cause of action to the department (~~or self-~~
7 ~~insurer~~), which may prosecute or compromise the action in its
8 discretion in the name of the injured worker, beneficiary or legal
9 representative.

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

15 (3) If a beneficiary is a minor child, an election not to proceed
16 against a third person on such beneficiary's cause of action may be
17 exercised by the beneficiary's legal custodian or guardian.

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

20 (a) The department (~~or self-insurer~~) shall be paid the expenses
21 incurred in making the recovery including reasonable costs of legal
22 services;

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

1 (c) The department (~~(and/or self-insurer)~~) shall be paid the
2 compensation and benefits paid to or on behalf of the injured worker or
3 beneficiary by the department (~~(and/or self-insurer)~~); and

4 (d) The injured worker or beneficiary shall be paid any remaining
5 balance.

6 (5) Thereafter no payment shall be made to or on behalf of a worker
7 or beneficiary by the department (~~(and/or self-insurer)~~) for such
8 injury until the amount of any further compensation and benefits shall
9 equal any such remaining balance. Thereafter, such benefits shall be
10 paid by the department (~~(and/or self-insurer)~~) to or on behalf of the
11 worker or beneficiary as though no recovery had been made from a third
12 person.

13 (~~(In the case of an employer not qualifying as a self-~~
14 ~~insurer,)~~) The department shall make a retroactive adjustment to
15 (~~(such)~~) the employer's experience rating in which the third party
16 claim has been included to reflect that portion of the award or
17 settlement which is reimbursed for compensation and benefits paid and,
18 if the claim is open at the time of recovery, applied against further
19 compensation or benefits to which the injured worker or beneficiary may
20 be entitled.

21 (7) When the cause of action has been assigned to (~~(the)~~) a former
22 self-insurer and compensation and benefits have been paid and/or are
23 payable from state funds for the same injury:

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

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

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

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

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

11 **Sec. 9.** RCW 51.24.060 and 1987 c 442 s 1118 are each amended to
12 read as follows:

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

16 (a) The costs and reasonable attorneys' fees shall be paid
17 proportionately by the injured worker or beneficiary and the department
18 (~~and/or self-insurer~~);

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

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

27 (i) The department (~~and/or self-insurer~~) shall bear its
28 proportionate share of the costs and reasonable attorneys' fees
29 incurred by the worker or beneficiary to the extent of the benefits

1 paid or payable under this title: PROVIDED, That the department ((or
2 ~~self-insurer~~)) may require court approval of costs and attorneys' fees
3 or may petition a court for determination of the reasonableness of
4 costs and attorneys' fees.

5 (ii) The sum representing the department's ((~~and/or self-~~
6 ~~insurer's~~)) proportionate share shall not be subject to subsection (1)
7 (d) and (e) of this section.

8 (d) Any remaining balance shall be paid to the injured worker or
9 beneficiary;

10 (e) Thereafter no payment shall be made to or on behalf of a worker
11 or beneficiary by the department ((~~and/or self-insurer~~)) for such
12 injury until the amount of any further compensation and benefits shall
13 equal any such remaining balance. Thereafter, such benefits shall be
14 paid by the department ((~~and/or self-insurer~~)) to or on behalf of the
15 worker or beneficiary as though no recovery had been made from a third
16 person;

17 (f) If the employer or a co-employee are determined under RCW
18 4.22.070 to be at fault, (c) and (e) of this subsection do not apply
19 and benefits shall be paid by the department ((~~and/or self-insurer~~)) to
20 or on behalf of the worker or beneficiary as though no recovery had
21 been made from a third person.

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

24 (3) The department ((~~or self-insurer~~)) has sole discretion to
25 compromise the amount of its lien. In deciding whether or to what
26 extent to compromise its lien, the department ((~~or self-insurer~~)) shall
27 consider at least the following:

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

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

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

6 (4) (~~In the case of an employer not qualifying as a self-~~
7 ~~insurer,~~) The department shall make a retroactive adjustment to such
8 employer's experience rating in which the third party claim has been
9 included to reflect that portion of the award or settlement which is
10 reimbursed for compensation and benefits paid and, if the claim is open
11 at the time of recovery, applied against further compensation and
12 benefits to which the injured worker or beneficiary may be entitled.

13 (5) In an action under this section involving a claim formerly
14 self-insured under this title, the former self-insurer may act on
15 behalf and for the benefit of the department to the extent of any
16 compensation and benefits paid or payable from state funds.

17 (6) It shall be the duty of the person to whom any recovery is paid
18 before distribution under this section to advise the department or
19 former self-insurer of the fact and amount of such recovery, the costs
20 and reasonable attorneys' fees associated with the recovery, and to
21 distribute the recovery in compliance with this section.

22 (7) The distribution of any recovery made by award or settlement of
23 the third party action shall be confirmed by department order, served
24 by registered or certified mail, and shall be subject to chapter 51.52
25 RCW. In the event the order of distribution becomes final under
26 chapter 51.52 RCW, the director or the director's designee may file
27 with the clerk of any county within the state a warrant in the amount
28 of the sum representing the unpaid lien plus interest accruing from the
29 date the order became final. The clerk of the county in which the
30 warrant is filed shall immediately designate a superior court cause

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

20 (8) The director, or the director's designee, may issue to any
21 person, firm, corporation, municipal corporation, political subdivision
22 of the state, public corporation, or agency of the state, a notice and
23 order to withhold and deliver property of any kind if he or she has
24 reason to believe that there is in the possession of such person, firm,
25 corporation, municipal corporation, political subdivision of the state,
26 public corporation, or agency of the state, property which is due,
27 owing, or belonging to any worker or beneficiary upon whom a warrant
28 has been served by the department for payments due to the state fund.
29 The notice and order to withhold and deliver shall be served by the
30 sheriff of the county or by the sheriff's deputy, or by any authorized

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

20 **Sec. 10.** RCW 51.24.070 and 1984 c 218 s 6 are each amended to read
21 as follows:

22 (1) The department, or former self-insurer if the claim was
23 formerly self-insured under this title, may require the injured worker
24 or beneficiary to exercise the right of election under this chapter by
25 serving a written demand by registered mail, certified mail, or
26 personal service on the worker or beneficiary.

27 (2) Unless an election is made within sixty days of the receipt of
28 the demand, and unless an action is instituted or settled within the
29 time granted by the department or former self-insurer, the injured

1 worker or beneficiary is deemed to have assigned the action to the
2 department or former self-insurer. The department or former self-
3 insurer shall allow the worker or beneficiary at least ninety days from
4 the election to institute or settle the action. When a beneficiary is
5 a minor child the demand shall be served upon the legal custodian or
6 guardian of such beneficiary.

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

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

19 **Sec. 11.** RCW 51.24.080 and 1977 ex.s. c 85 s 6 are each amended to
20 read as follows:

21 (1) If the injured worker or beneficiary elects to seek damages
22 from the third person, notice of the election must be given to the
23 department or former self-insurer if the claim was formerly self-
24 insured under this title. The notice shall be by registered mail,
25 certified mail, or personal service. If an action is filed by the
26 injured worker or beneficiary, a copy of the complaint must be sent by
27 registered mail to the department or former self-insurer.

28 (2) A return showing service of the notice on the department or
29 former self-insurer shall be filed with the court but shall not be part

1 of the record except as necessary to give notice to the defendant of
2 the lien imposed by RCW 51.24.060(2).

3 **Sec. 12.** RCW 51.24.090 and 1984 c 218 s 7 are each amended to read
4 as follows:

5 (1) Any compromise or settlement of the third party cause of action
6 by the injured worker or beneficiary which results in less than the
7 entitlement under this title is void unless made with the written
8 approval of the department or former self-insurer if the claim was
9 formerly self-insured under this title: PROVIDED, That for the
10 purposes of this chapter, "entitlement" means benefits and compensation
11 paid and payable.

12 (2) If a compromise or settlement is void because of subsection (1)
13 of this section, the department or former self-insurer may petition the
14 court in which the action was filed for an order assigning the cause of
15 action to the department or former self-insurer. If an action has not
16 been filed, the department or former self-insurer may proceed as
17 provided in chapter 7.24 RCW.

18 **Sec. 13.** RCW 51.28.030 and 1972 ex.s. c 43 s 17 are each amended
19 to read as follows:

20 Where death results from injury the parties entitled to
21 compensation under this title, or someone in their behalf, shall make
22 application for the same to the department (~~or self-insurer as the~~
23 ~~ease may be~~)), which application must be accompanied with proof of
24 death and proof of relationship showing the parties to be entitled to
25 compensation under this title, certificates of attending physician, if
26 any, and such proof as required by the rules of the department.

27 Upon receipt of notice of accident under RCW 51.28.010, the
28 director shall immediately forward to the party or parties required to

1 make application for compensation under this section, notification, in
2 nontechnical language, of their rights under this title.

3 **Sec. 14.** RCW 51.28.055 and 1984 c 159 s 2 are each amended to read
4 as follows:

5 Claims for occupational disease or infection to be valid and
6 compensable must be filed within two years following the date the
7 worker had written notice from a physician: (1) Of the existence of
8 his or her occupational disease, and (2) that a claim for disability
9 benefits may be filed. The notice shall also contain a statement that
10 the worker has two years from the date of the notice to file a claim.
11 The physician shall file the notice with the department. The
12 department shall send a copy to the worker (~~and to the self-insurer if~~
13 ~~the worker's employer is self-insured~~). However, a claim is valid if
14 it is filed within two years from the date of death of the worker
15 suffering from an occupational disease.

16 **Sec. 15.** RCW 51.32.055 and 1988 c 161 s 13 are each amended to
17 read as follows:

18 (1) One purpose of this title is to restore the injured worker as
19 near as possible to the condition of self-support as an able-bodied
20 worker. Benefits for permanent disability shall be determined under
21 the director's supervision only after the injured worker's condition
22 becomes fixed.

23 (2) All determinations of permanent disabilities shall be made by
24 the department. Either the worker(~~(r)~~) or employer(~~(r, or self-~~
25 ~~insurer)~~) may make a request or such inquiry may be initiated by the
26 director on his or her own motion. Such 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

1 possession of or under the control of the employer (~~(or self-insurer)~~)
2 shall be forwarded to the director with such requests.

3 (3) A request for determination of permanent disability shall be
4 examined by the department and an order shall issue in accordance with
5 RCW 51.52.050.

6 (4) The department may require that the worker present himself or
7 herself for a special medical examination by a physician, or
8 physicians, selected by the department, and the department may require
9 that the worker present himself or herself for a personal interview.
10 In such event the costs of such 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
18 cost of such medical bureau in a manner to be determined by the
19 department.)~~)

20 (6) Where dispute arises from the handling of any claims prior to
21 the condition of the injured worker becoming fixed, the worker(~~(τ)~~) or
22 employer(~~(τ, or self-insurer)~~) may request the department to resolve the
23 dispute or the director may initiate an inquiry on his or her own
24 motion. In such cases the department shall proceed as provided in this
25 section and an order shall issue in accordance with RCW 51.52.050.

26 (~~((7)(a) In the case of claims accepted by self-insurers after June
27 30, 1986, and before July 1, 1990, which involve only medical treatment
28 and/or the payment of temporary disability compensation under RCW
29 51.32.090 and which at the time medical treatment is concluded do not
30 involve permanent disability, if the claim is one with respect to which~~

1 the department has not intervened under subsection (6) of this section,
2 and the injured worker has returned to work with the self-insured
3 employer of record, such claims may be closed by the self-insurer,
4 subject to reporting of claims to the department in a manner prescribed
5 by department rules adopted under chapter 34.05 RCW.

6 (b) All determinations of permanent disability for claims accepted
7 by self-insurers after June 30, 1986, and before July 1, 1990, shall be
8 made by the self-insured section of the department under subsections
9 (1) through (4) of this section.

10 (c) Upon closure of claims under (a) of this subsection the self-
11 insurer shall enter a written order, communicated to the worker and the
12 department self-insurance section, which contains the following
13 statement clearly set forth in bold face type: "This order constitutes
14 notification that your claim is being closed with medical benefits and
15 temporary disability compensation only as provided, and with the
16 condition you have returned to work with the self-insured employer. If
17 for any reason you disagree with the conditions or duration of your
18 return to work or the medical benefits or the temporary disability
19 compensation that has been provided, you may protest in writing to the
20 department of labor and industries, self-insurance section, within
21 sixty days of the date you received this order." In the event the
22 department receives such a protest the self-insurer's closure order
23 shall be held in abeyance. The department shall review the claim
24 closure action and enter a determinative order as provided for in RCW
25 51.52.050.

26 (d) If within two years of claim closure the department determines
27 that the self-insurer has made payment of benefits because of clerical
28 error, mistake of identity, or innocent misrepresentation, or the
29 department discovers a violation of the conditions of claim closure,
30 the department may require the self-insurer to correct the benefits

1 paid or payable. This paragraph shall not limit in any way the
2 application of RCW 51.32.240.

3 (8) In the case of claims accepted by self-insurers after June 30,
4 1990, which involve only medical treatment and which do not involve
5 payment of temporary disability compensation under RCW 51.32.090 and
6 which at the time medical treatment is concluded do not involve
7 permanent disability, such claims may be closed by the self-insurers
8 subject to reporting of claims to the department in a manner prescribed
9 by department rules promulgated pursuant to chapter 34.05 RCW. Upon
10 such closure the self-insurers shall enter a written order,
11 communicated to the worker, which contains the following statement
12 clearly set forth in bold face type: "This order constitutes
13 notification that your claim is being closed with medical benefits
14 only, as provided. If for any reason you disagree with this closure,
15 you may protest in writing to the Department of Labor and Industries,
16 Olympia, within 60 days of the date you received this order. The
17 department will then review your claim and enter a further
18 determinative order." In the event the department receives such a
19 protest it shall review the claim and enter a further determinative
20 order as provided for in RCW 51.52.050.))

21 **Sec. 16.** RCW 51.32.073 and 1989 c 385 s 4 are each amended to read
22 as follows:

23 (1) Except as provided in subsection (2) of this section, each
24 employer shall retain from the earnings of each worker that amount as
25 shall be fixed from time to time by the director, the basis for
26 measuring said amount to be determined by the director. The money so
27 retained shall be matched in an equal amount by each employer, and all
28 such moneys shall be remitted to the department in such manner and at
29 such intervals as the department directs and shall be placed in the

1 supplemental pension fund: PROVIDED, That the state apprenticeship
2 council shall pay the entire amount into the supplemental pension fund
3 for registered apprentices or trainees during their participation in
4 supplemental and related instruction classes. The moneys so collected
5 shall be used exclusively for the additional payments from the
6 supplemental pension fund prescribed in this title and for the amount
7 of any increase payable under the provisions of RCW 51.32.075, as now
8 or hereafter amended, and shall be no more than necessary to make such
9 payments on a current basis. (~~The department may require a self-~~
10 ~~insurer to make any additional payments which are payable from the~~
11 ~~supplemental pension fund and thereafter such self insurer shall be~~
12 ~~reimbursed therefrom.))~~

13 (2) None of the amount assessed for the supplemental pension fund
14 under RCW 51.16.210 may be retained from the earnings of workers
15 covered under RCW 51.16.210.

16 **Sec. 17.** RCW 51.32.075 and 1988 c 161 s 7 are each amended to read
17 as follows:

18 The compensation or death benefits payable pursuant to the
19 provisions of this chapter for temporary total disability, permanent
20 total disability, or death arising out of injuries or occupational
21 diseases shall be adjusted as follows:

22 (1) On July 1, 1982, there shall be an adjustment for those whose
23 right to compensation was established on or after July 1, 1971, and
24 before July 1, 1982. The adjustment shall be determined by multiplying
25 the amount of compensation to which they are entitled by a fraction,
26 the denominator of which shall be the average monthly wage in the state
27 under RCW 51.08.018 for the fiscal year in which such person's right to
28 compensation was established, and the numerator of which shall be the
29 average monthly wage in the state under RCW 51.08.018 on July 1, 1982.

1 (2) In addition to the adjustment established by subsection (1) of
2 this section, there shall be another adjustment on July 1, 1983, for
3 those whose right to compensation was established on or after July 1,
4 1971, and before July 1983, which shall be determined by multiplying
5 the amount of compensation to which they are entitled by a fraction,
6 the denominator of which shall be the average monthly wage in the state
7 under RCW 51.08.018 for the fiscal year in which such person's right to
8 compensation was established, and the numerator of which shall be the
9 average monthly wage in the state under RCW 51.08.018 on July 1, 1983.

10 (3) In addition to the adjustments under subsections (1) and (2) of
11 this section, further adjustments shall be made beginning on July 1,
12 1984, and on each July 1st thereafter for those whose right to
13 compensation was established on or after July 1, 1971. The adjustment
14 shall be determined by multiplying the amount of compensation to which
15 they are entitled by a fraction, the denominator of which shall be the
16 average monthly wage in the state under RCW 51.08.018 for the fiscal
17 year in which such person's right to compensation was established, and
18 the numerator of which shall be the average monthly wage in the state
19 under RCW 51.08.018 on July 1st of the year in which the adjustment is
20 being made. The department (~~(or self-insurer)~~) shall adjust the
21 resulting compensation rate to the nearest whole cent, not to exceed
22 the average monthly wage in the state as computed under RCW 51.08.018.

23 **Sec. 18.** RCW 51.32.095 and 1988 c 161 s 9 are each amended to read
24 as follows:

25 (1) One of the primary purposes of this title is to enable the
26 injured worker to become employable at gainful employment. To this
27 end, the department (~~(or self-insurers)~~) shall utilize the services of
28 individuals and organizations, public or private, whose experience,
29 training, and interests in vocational rehabilitation and retraining

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

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

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

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

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

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

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

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

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

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

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

2 (3) Costs for vocational rehabilitation benefits allowed by the
3 supervisor or supervisor's designee under subsection (1) of this
4 section may include the cost of books, tuition, fees, supplies,
5 equipment, transportation, child or dependent care, and other necessary
6 expenses for any such worker in an amount not to exceed three thousand
7 dollars in any fifty-two week period, and the cost of continuing the
8 temporary total disability compensation under RCW 51.32.090 while the
9 worker is actively and successfully undergoing a formal program of
10 vocational rehabilitation. Such expenses may include training fees for
11 on-the-job training and the cost of furnishing tools and other
12 equipment necessary for self-employment or reemployment: PROVIDED,
13 That such compensation or payment of retraining with job placement
14 expenses may not be authorized for a period of more than fifty-two
15 weeks: PROVIDED FURTHER, That such period may, in the sole discretion
16 of the supervisor after his or her review, be extended for an
17 additional fifty-two weeks or portion thereof by written order of the
18 supervisor.

19 In cases where the worker is required to reside away from his or
20 her customary residence, the reasonable cost of board and lodging shall
21 also be paid. Said costs shall be chargeable to the employer's cost
22 experience (~~((or shall be paid by the self insurer as the case may be))~~).

23 (4) The department shall establish criteria to monitor the quality
24 and effectiveness of rehabilitation services provided by the
25 individuals and organizations used under subsection (1) of this
26 section. The state fund shall make referrals for vocational
27 rehabilitation services based on these performance criteria.

28 (5) The department shall engage in, where feasible and cost-
29 effective, a cooperative program with the state employment security
30 department to provide job placement services under this section.

1 (6) (~~The benefits in this section shall be provided for the~~
2 ~~injured workers of self-insured employers. Self-insurers shall report~~
3 ~~both benefits provided and benefits denied under this section in the~~
4 ~~manner prescribed by the department by rule adopted under chapter 34.05~~
5 ~~RCW.~~) The director may, in his or her sole discretion and upon his or
6 her own initiative or at any time that a dispute arises under this
7 section, promptly make such inquiries as circumstances require and take
8 such other action as he or she considers will properly determine the
9 matter and protect the rights of the parties.

10 (7) The benefits provided for in this section are available to any
11 otherwise eligible worker regardless of the date of industrial injury.
12 However, claims shall not be reopened solely for vocational
13 rehabilitation purposes.

14 **Sec. 19.** RCW 51.32.110 and 1980 c 14 s 11 are each amended to read
15 as follows:

16 Any worker entitled to receive any benefits or claiming such under
17 this title shall, if requested by the department (~~or self-insurer~~),
18 submit himself or herself for medical examination, at a time and from
19 time to time, at a place reasonably convenient for the worker and as
20 may be provided by the rules of the department. If the worker refuses
21 to submit to medical examination, or obstructs the same, or, if any
22 injured worker shall persist in unsanitary or injurious practices which
23 tend to imperil or retard his or her recovery, or shall refuse to
24 submit to such medical or surgical treatment as is reasonably essential
25 to his or her recovery or refuse or obstruct evaluation or examination
26 for the purpose of vocational rehabilitation or does not cooperate in
27 reasonable efforts at such rehabilitation, the department (~~or the~~
28 ~~self-insurer upon approval by the department~~), with notice to the
29 worker may suspend any further action on any claim of such worker so

1 long as such refusal, obstruction, noncooperation, or practice
2 continues and reduce, suspend, or deny any compensation for such
3 period: PROVIDED, That the department (~~(or the self-insurer)~~) shall
4 not suspend any further action on any claim of a worker or reduce,
5 suspend, or deny any compensation if a worker has good cause for
6 refusing to submit to or to obstruct any examination, evaluation,
7 treatment or practice requested by the department or required under
8 this section. If the worker necessarily incurs traveling expenses in
9 attending for examination pursuant to the request of the department,
10 such traveling expenses shall be repaid to him or her out of the
11 accident fund upon proper voucher and audit (~~(or shall be repaid by the~~
12 ~~self-insurer, as the case may be)~~).

13 If the medical examination required by this section causes the
14 worker to be absent from his or her work without pay he or she shall be
15 paid for such time lost in accordance with the schedule of payments
16 provided in RCW 51.32.090 as amended.

17 **Sec. 20.** RCW 51.32.112 and 1988 c 114 s 2 are each amended to read
18 as follows:

19 (1) The department shall develop standards for the conduct of
20 special medical examinations to determine permanent disabilities,
21 including, but not limited to:

22 (a) The qualifications of persons conducting the examinations;

23 (b) The criteria for conducting the examinations, including
24 guidelines for the appropriate treatment of injured workers during the
25 examination; and

26 (c) The content of examination reports.

27 (2) The department shall investigate the amount of examination fees
28 received by persons conducting special medical examinations to
29 determine permanent disabilities, including total compensation received

1 for examinations of (~~department and self-insured~~) claimants, and
2 establish compensation guidelines and compensation reporting criteria.

3 (~~(3) The department shall investigate the level of compliance of~~
4 ~~self-insurers with the requirement of full reporting of claims~~
5 ~~information to the department, particularly with respect to medical~~
6 ~~examinations, and develop effective enforcement procedures or~~
7 ~~recommendations for legislation if needed.~~)

8 **Sec. 21.** RCW 51.32.114 and 1988 c 114 s 3 are each amended to read
9 as follows:

10 The department shall examine the credentials of persons conducting
11 special medical examinations and shall monitor the quality and
12 objectivity of examinations and reports for (~~the department and self-~~
13 ~~insured~~) claimants. The department shall adopt rules to ensure that
14 examinations are performed only by qualified persons meeting department
15 standards.

16 **Sec. 22.** RCW 51.32.160 and 1988 c 161 s 11 are each amended to
17 read as follows:

18 If aggravation, diminution, or termination of disability takes
19 place, the director may, upon the application of the beneficiary, made
20 within seven years from the date the first closing order becomes final,
21 or at any time upon his or her own motion, readjust the rate of
22 compensation in accordance with the rules in this section provided for
23 the same, or in a proper case terminate the payment: PROVIDED, That
24 the director may, upon application of the worker made at any time,
25 provide proper and necessary medical and surgical services as
26 authorized under RCW 51.36.010. "Closing order" as used in this
27 section means an order based on factors which include medical
28 recommendation, advice, or examination. Applications for benefits

1 where the claim has been closed without medical recommendation, advice,
2 or examination are not subject to the seven year limitation of this
3 section. The preceding sentence shall not apply to any closing order
4 issued prior to July 1, 1981. First closing orders issued between July
5 1, 1981, and July 1, 1985, shall, for the purposes of this section
6 only, be deemed issued on July 1, 1985. The time limitation of this
7 section shall be ten years in claims involving loss of vision or
8 function of the eyes. If an order denying an application to reopen
9 filed on or after July 1, 1988, is not issued within ninety days of
10 receipt of such application by ((the self-insured employer or)) the
11 department, such application shall be deemed granted. However, for
12 good cause, the department may extend the time for making the final
13 determination on the application for an additional sixty days.

14 If a worker receiving a pension for total disability returns to
15 gainful employment for wages, the director may suspend or terminate the
16 rate of compensation established for the disability without producing
17 medical evidence that shows that a diminution of the disability has
18 occurred.

19 No act done or ordered to be done by the director, or the
20 department prior to the signing and filing in the matter of a written
21 order for such readjustment shall be grounds for such readjustment.

22 **Sec. 23.** RCW 51.32.220 and 1982 c 63 s 19 are each amended to read
23 as follows:

24 (1) For persons under the age of sixty-five receiving compensation
25 for temporary or permanent total disability pursuant to the provisions
26 of chapter 51.32 RCW, such compensation shall be reduced by an amount
27 equal to the benefits payable under the federal old-age, survivors and
28 disability insurance act as now or hereafter amended not to exceed the
29 amount of the reduction established pursuant to 42 USC 424a. However,

1 such reduction shall not apply when the combined compensation provided
2 pursuant to chapter 51.32 RCW and the federal old-age, survivors and
3 disability insurance act is less than the total benefits to which the
4 federal reduction would apply, pursuant to 42 USC 424a. Where any
5 person described in this section refuses to authorize the release of
6 information concerning the amount of benefits payable under said
7 federal act the department's estimate of said amount shall be deemed to
8 be correct unless and until the actual amount is established and no
9 adjustment shall be made for any period of time covered by any such
10 refusal.

11 (2) Any reduction under subsection (1) of this section shall be
12 effective the month following the month in which the department ((~~or~~
13 ~~self-insurer~~)) is notified by the federal social security
14 administration that the person is receiving disability benefits under
15 the federal old-age, survivors and disability insurance act: PROVIDED,
16 That in the event of an overpayment of benefits the department ((~~or~~
17 ~~self-insurer~~)) may not recover more than the overpayments for the six
18 months immediately preceding the date the department ((~~or~~~~self-~~
19 ~~insurer~~)) notifies the worker that an overpayment has occurred:
20 PROVIDED FURTHER, That upon determining that there has been an
21 overpayment, the department ((~~or~~~~self-insurer~~)) shall immediately
22 notify the person who received the overpayment that he or she shall be
23 required to make repayment pursuant to this section and RCW 51.32.230.

24 (3) Recovery of any overpayment must be taken from future temporary
25 or permanent total disability benefits or permanent partial disability
26 benefits provided by this title. In the case of temporary or permanent
27 total disability benefits, the recovery shall not exceed twenty-five
28 percent of the monthly amount due from the department ((~~or~~~~self-~~
29 ~~insurer~~)) or one-sixth of the total overpayment, whichever is the
30 lesser.

1 (4) No reduction may be made unless the worker receives notice of
2 the reduction prior to the month in which the reduction is made.

3 (5) In no event shall the reduction reduce total benefits to less
4 than the greater amount the worker may be entitled to under this title
5 or the federal old-age, survivors and disability insurance act.

6 (6) The director, pursuant to rules adopted in accordance with the
7 procedures provided in the administrative procedure act, chapter 34.05
8 RCW, may exercise his discretion to waive, in whole or in part, the
9 amount of any overpayment where the recovery would be against equity
10 and good conscience.

11 (7) The amendment in subsection (1) of this section by chapter 63,
12 Laws of 1982 raising the age limit during which the reduction shall be
13 made from age sixty-two to age sixty-five shall apply with respect to
14 workers whose effective entitlement to total disability compensation
15 begins after January 1, 1983.

16 **Sec. 24.** RCW 51.32.240 and 1986 c 54 s 1 are each amended to read
17 as follows:

18 (1) Whenever any payment of benefits under this title is made
19 because of clerical error, mistake of identity, innocent
20 misrepresentation by or on behalf of the recipient thereof mistakenly
21 acted upon, or any other circumstance of a similar nature, all not
22 induced by fraud, the recipient thereof shall repay it and recoupment
23 may be made from any future payments due to the recipient on any claim
24 with the state fund (~~(or self insurer, as the case may be)~~). The
25 department (~~(or self insurer, as the case may be,)~~) must make claim for
26 such repayment or recoupment within one year of the making of any such
27 payment or it will be deemed any claim therefor has been waived. The
28 director, pursuant to rules adopted in accordance with the procedures
29 provided in the administrative procedure act, chapter 34.05 RCW, may

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

4 (2) Whenever the department issues an order rejecting a claim for
5 benefits paid pursuant to RCW (~~(51.32.190 or)~~) 51.32.210, after payment
6 for temporary disability benefits has been paid (~~(by a self-insurer~~
7 ~~pursuant to RCW 51.32.190(3) or)~~) by the department pursuant to RCW
8 51.32.210, the recipient thereof shall repay such benefits and
9 recoupment may be made from any future payments due to the recipient on
10 any claim with the state fund (~~(or self-insurer, as the case may be)~~).
11 The director, under rules adopted in accordance with the procedures
12 provided in the administrative procedure act, chapter 34.05 RCW, may
13 exercise discretion to waive, in whole or in part, the amount of any
14 such payments where the recovery would be against equity and good
15 conscience.

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

28 (4) Whenever any payment of benefits under this title has been
29 induced by fraud the recipient thereof shall repay any such payment
30 together with a penalty of fifty percent of the total of any such

1 payments and the amount of such total sum may be recouped from any
2 future payments due to the recipient on any claim with the state fund
3 (~~or self-insurer against whom the fraud was committed, as the case may~~
4 be)), and the amount of such penalty shall be placed in the
5 supplemental pension fund. Such repayment or recoupment must be
6 demanded or ordered within one year of the discovery of the fraud.

7 **Sec. 25.** RCW 51.36.010 and 1986 c 58 s 6 are each amended to read
8 as follows:

9 Upon the occurrence of any injury to a worker entitled to
10 compensation under the provisions of this title, he or she shall
11 receive proper and necessary medical and surgical services at the hands
12 of a physician of his or her own choice, if conveniently located, and
13 proper and necessary hospital care and services during the period of
14 his or her disability from such injury, but the same shall be limited
15 in point of duration as follows:

16 In the case of permanent partial disability, not to extend beyond
17 the date when compensation shall be awarded him or her, except when the
18 worker returned to work before permanent partial disability award is
19 made, in such case not to extend beyond the time when monthly
20 allowances to him or her shall cease; in case of temporary disability
21 not to extend beyond the time when monthly allowances to him or her
22 shall cease: PROVIDED, That after any injured worker has returned to
23 his or her work his or her medical and surgical treatment may be
24 continued if, and so long as, such continuation is deemed necessary by
25 the supervisor of industrial insurance to be necessary to his or her
26 more complete recovery; in case of a permanent total disability not to
27 extend beyond the date on which a lump sum settlement is made with him
28 or her or he or she is placed upon the permanent pension roll:
29 PROVIDED, HOWEVER, That the supervisor of industrial insurance, solely

1 in his or her discretion, may authorize continued medical and surgical
2 treatment for conditions previously accepted by the department when
3 such medical and surgical treatment is deemed necessary by the
4 supervisor of industrial insurance to protect such worker's life or
5 provide for the administration of medical and therapeutic measures
6 including payment of prescription medications, but not including those
7 controlled substances currently scheduled by the state board of
8 pharmacy as Schedule I, II, III, or IV substances under chapter 69.50
9 RCW, which are necessary to alleviate continuing pain which results
10 from the industrial injury. In order to authorize such continued
11 treatment the written order of the supervisor of industrial insurance
12 issued in advance of the continuation shall be necessary.

13 The supervisor of industrial insurance(~~(7)~~) or the supervisor's
14 designee, (~~(or a self-insurer,)~~) in his or her sole discretion, may
15 authorize inoculation or other immunological treatment in cases in
16 which a work-related activity has resulted in probable exposure of the
17 worker to a potential infectious occupational disease. Authorization
18 of such treatment does not bind the department (~~(or self-insurer)~~) in
19 any adjudication of a claim by the same worker or the worker's
20 beneficiary for an occupational disease.

21 **Sec. 26.** RCW 51.36.020 and 1982 c 63 s 12 are each amended to read
22 as follows:

23 (1) When the injury to any worker is so serious as to require his
24 or her being taken from the place of injury to a place of treatment,
25 his or her employer shall, at the expense of the medical aid fund, (~~(or~~
26 ~~self-insurer, as the case may be,)~~) furnish transportation to the
27 nearest place of proper treatment.

28 (2) Every worker whose injury results in the loss of one or more
29 limbs or eyes shall be provided with proper artificial substitutes and

1 every worker, who suffers an injury to an eye producing an error of
2 refraction, shall be once provided proper and properly equipped lenses
3 to correct such error of refraction and his or her disability rating
4 shall be based upon the loss of sight before correction.

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

8 (4) Every worker whose hearing aid or eyeglasses or lenses are
9 damaged, destroyed, or lost as a result of an industrial accident shall
10 have the same restored or replaced. The department (~~(or self-insurer)~~)
11 shall be liable only for the cost of restoring damaged hearing aids or
12 eyeglasses to their condition at the time of the accident.

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

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

24 (7) Whenever in the sole discretion of the supervisor it is
25 reasonable and necessary to provide residence modifications necessary
26 to meet the needs and requirements of the worker who has sustained
27 catastrophic injury, the department (~~(or self-insurer)~~) may be ordered
28 to pay an amount not to exceed the state's average annual wage for one
29 year as determined under RCW 50.04.355, as now existing or hereafter
30 amended, toward the cost of such modifications or construction. Such

1 payment shall only be made for the construction or modification of a
2 residence in which the injured worker resides. Only one residence of
3 any worker may be modified or constructed under this subsection,
4 although the supervisor may order more than one payment for any one
5 home, up to the maximum amount permitted by this section.

6 (8) Whenever in the sole discretion of the supervisor it is
7 reasonable and necessary to modify a motor vehicle owned by a worker
8 who has become an amputee or becomes paralyzed because of an industrial
9 injury, the supervisor may order up to fifty percent of the state's
10 average annual wage for one year, as determined under RCW 50.04.355, as
11 now existing or hereafter amended, to be paid by the department ((or
12 self-insurer)) toward the costs thereof.

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

16 **Sec. 27.** RCW 51.36.050 and 1979 ex.s. c 42 s 1 are each amended to
17 read as follows:

18 The department may operate and control a rehabilitation center and
19 may contract with ((self-insurers, and)) any other persons who may be
20 interested, for use of any such center on such terms as the director
21 deems reasonable.

22 **Sec. 28.** RCW 51.36.060 and 1989 c 12 s 17 are each amended to read
23 as follows:

24 Physicians examining or attending injured workers under this title
25 shall comply with rules and regulations adopted by the director, and
26 shall make such reports as may be requested by the department ((or
27 self-insurer)) upon the condition or treatment of any such worker, or
28 upon any other matters concerning such workers in their care. All

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

8 **Sec. 29.** RCW 51.36.070 and 1977 ex.s. c 350 s 60 are each amended
9 to read as follows:

10 Whenever the director or the self-insurer deems it necessary in
11 order to resolve any medical issue, a worker shall submit to
12 examination by a physician or physicians selected by the director, with
13 the rendition of a report to the person ordering the examination. The
14 director(~~(, in his or her discretion, may)~~) shall charge the cost of
15 such examination or examinations (~~(to the self-insurer or)~~) to the
16 medical aid fund (~~(as the case may be)~~). The cost of said examination
17 shall include payment to the worker of reasonable expenses connected
18 therewith.

19 **Sec. 30.** RCW 51.44.040 and 1982 c 63 s 14 are each amended to read
20 as follows:

21 (1) There shall be in the office of the state treasurer, a fund to
22 be known and designated as the "second injury fund", which shall be
23 used only for the purpose of defraying charges against it as provided
24 in RCW 51.16.120 and 51.32.250, as now or hereafter amended. Said fund
25 shall be administered by the director. The state treasurer shall be
26 the custodian of the second injury fund and shall be authorized to
27 disburse moneys from it only upon written order of the director.

1 (2) Payments to the second injury fund from the accident fund shall
2 be made pursuant to rules and regulations promulgated by the director.

3 ~~((3) Assessments for the second injury fund shall be imposed on
4 self-insurers pursuant to rules and regulations promulgated by the
5 director to ensure that self-insurers shall pay to such fund in the
6 proportion that the payments made from such fund on account of claims
7 made against self-insurers bears to the total sum of payments from such
8 fund.))~~

9 **Sec. 31.** RCW 51.44.070 and 1989 c 190 s 1 are each amended to read
10 as follows:

11 ~~((1))~~ For every case resulting in death or permanent total
12 disability the department shall transfer on its books from the accident
13 fund of the proper class and/or appropriate account to the "reserve
14 fund" a sum of money for that case equal to the estimated present cash
15 value of the monthly payments provided for it, to be calculated upon
16 the basis of an annuity covering the payments in this title provided to
17 be made for the case. Such annuity values shall be based upon rates of
18 mortality, disability, remarriage, and interest as determined by the
19 department, taking into account the experience of the reserve fund in
20 such respects.

21 ~~((Similarly, a self-insurer in these circumstances shall pay into
22 the reserve fund a sum of money computed in the same manner, and the
23 disbursements therefrom shall be made as in other cases.~~

24 ~~(2) As an alternative to payment procedures otherwise provided
25 under law, in the event of death or permanent total disability to
26 workers of self-insured employers, a self-insured employer may upon
27 establishment of such obligation file with the department a bond, or an
28 assignment of account from a federally or state chartered commercial
29 banking institution authorized to conduct business in the state of~~

1 Washington, in an amount deemed by the department to be reasonably
2 sufficient to insure payment of the pension benefits provided by law.
3 The department shall adopt rules governing assignments of account.
4 Such rules shall ensure that the funds are available if needed, even in
5 the case of failure of the banking institution or of the employer's
6 business.

7 The annuity value for every such case shall be determined by the
8 department based upon the department's experience as to rates of
9 mortality, disability, remarriage, and interest. The amount of the
10 required bond or assignment of account may be reviewed and adjusted
11 periodically by the department, based upon periodic redeterminations by
12 the department as to the outstanding annuity value for the case.

13 Under such alternative, the department shall make the monthly
14 payments from the pension reserve fund for the benefits provided for by
15 RCW 51.32.050 and 51.32.060 to the self-insured beneficiary or
16 beneficiaries and the department shall be reimbursed for all such
17 payments from the particular self-insured employer through periodic
18 charges not less than quarterly in a manner to be determined by the
19 director.

20 Any self-insured employer electing this alternative method of
21 providing for payment to the beneficiary or beneficiaries shall
22 additionally pay to the department a deposit equal to the first three
23 months' payments otherwise required under RCW 51.32.050 and 51.32.060.
24 Such deposit shall be placed in the reserve fund in accordance with RCW
25 51.44.140 and shall be returned to the respective self-insured employer
26 when monthly payments are no longer required for such particular
27 obligation.

28 If a self-insurer delays or refuses to reimburse the department
29 beyond fifteen days after the reimbursement charges become due, there
30 shall be a penalty paid by the self-insurer upon order of the director

1 of an additional amount equal to twenty five percent of the amount then
2 due which shall be paid into the pension reserve fund. Such an order
3 shall conform to the requirements of RCW 51.52.050.)

4 **Sec. 32.** RCW 51.48.050 and 1980 c 14 s 13 are each amended to read
5 as follows:

6 It shall be unlawful for any employer to directly or indirectly
7 demand or collect from any of his or her workers any sum of money
8 whatsoever for or on account of medical, surgical, hospital, or other
9 treatment or transportation of injured workers, (~~other than as~~
10 ~~specified in RCW 51.16.140,~~) and any employer who directly or
11 indirectly violates the foregoing provisions of this section shall be
12 liable to the state for the benefit of the medical aid fund in ten
13 times the amount so demanded or collected, and such employer and every
14 officer, agent, or servant of such employer knowingly participating
15 therein shall also be guilty of a misdemeanor.

16 **Sec. 33.** RCW 51.52.050 and 1987 c 151 s 1 are each amended to read
17 as follows:

18 Whenever the department has made any order, decision, or award, it
19 shall promptly serve the worker, beneficiary, employer, or other person
20 affected thereby, with a copy thereof by mail, which shall be addressed
21 to such person at his or her last known address as shown by the records
22 of the department. The copy, in case the same is a final order,
23 decision, or award, shall bear on the same side of the same page on
24 which is found the amount of the award, a statement, set in black faced
25 type of at least ten point body or size, that such final order,
26 decision, or award shall become final within sixty days from the date
27 the order is communicated to the parties unless a written request for
28 reconsideration is filed with the department of labor and industries,

1 Olympia, or an appeal is filed with the board of industrial insurance
2 appeals, Olympia: PROVIDED, That a department order or decision making
3 demand, whether with or without penalty, for repayment of sums paid to
4 a provider of medical, dental, vocational, or other health services
5 rendered to an industrially injured worker, shall state that such order
6 or decision shall become final within twenty days from the date the
7 order or decision is communicated to the parties unless a written
8 request for reconsideration is filed with the department of labor and
9 industries, Olympia, or an appeal is filed with the board of industrial
10 insurance appeals, Olympia.

11 Whenever the department has taken any action or made any decision
12 relating to any phase of the administration of this title the worker,
13 beneficiary, employer, or other person aggrieved thereby may request
14 reconsideration of the department, or may appeal to the board. In an
15 appeal before the board, the appellant shall have the burden of
16 proceeding with the evidence to establish a prima facie case for the
17 relief sought in such appeal: PROVIDED, That in an appeal from an
18 order of the department that alleges fraud, the department (~~or self-~~
19 ~~insured employer~~) shall initially introduce all evidence in its case
20 in chief. Any such person aggrieved by the decision and order of the
21 board may thereafter appeal to the superior court, as prescribed in
22 this chapter.

23 **Sec. 34.** RCW 51.52.110 and 1988 c 202 s 49 are each amended to
24 read as follows:

25 Within thirty days after a decision of the board to deny the
26 petition or petitions for review upon such appeal has been communicated
27 to such worker, beneficiary, employer or other person, or within thirty
28 days after the final decision and order of the board upon such appeal
29 has been communicated to such worker, beneficiary, employer or other

1 person, or within thirty days after the appeal is denied as herein
2 provided, such worker, beneficiary, employer or other person aggrieved
3 by the decision and order of the board may appeal to the superior
4 court. If such worker, beneficiary, employer, or other person fails to
5 file with the superior court its appeal as provided in this section
6 within said thirty days, the decision of the board to deny the petition
7 or petitions for review or the final decision and order of the board
8 shall become final.

9 In cases involving injured workers, an appeal to the superior court
10 shall be to the superior court of the county of residence of the worker
11 or beneficiary, as shown by the department's records, or to the
12 superior court of the county wherein the injury occurred or where
13 neither the county of residence nor the county wherein the injury
14 occurred are in the state of Washington then the appeal may be directed
15 to the superior court for Thurston county. In all other cases the
16 appeal shall be to the superior court of Thurston county. Such appeal
17 shall be perfected by filing with the clerk of the court a notice of
18 appeal and by serving a copy thereof by mail, or personally, on the
19 director and on the board. If the case is one involving a (~~self-~~
20 ~~insurer~~) claim formerly self-insured under this title, a copy of the
21 notice of appeal shall also be served by mail, or personally, on such
22 former self-insurer. The department shall, in all cases not involving
23 a self-insurer, within twenty days after the receipt of such notice of
24 appeal, serve and file its notice of appearance and such appeal shall
25 thereupon be deemed at issue. If the case is one involving a former
26 self-insurer, such self-insurer shall, within twenty days after receipt
27 of such notice of appeal, serve and file its notice of appearance and
28 such appeal shall thereupon be deemed to be at issue. In such cases
29 the department may appear and take part in any proceedings. The board
30 shall serve upon the appealing party, the director, the self-insurer if

1 the case involves a former self-insurer, and any other party appearing
2 at the board's proceeding, and file with the clerk of the court before
3 trial, a certified copy of the board's official record which shall
4 include the notice of appeal and other pleadings, testimony and
5 exhibits, and the board's decision and order, which shall become the
6 record in such case. No bond shall be required on appeals to the
7 superior court or on review by the supreme court or the court of
8 appeals, except that an appeal by the employer from a decision and
9 order of the board under RCW 51.48.070, shall be ineffectual unless,
10 within five days following the service of notice thereof, a bond, with
11 surety satisfactory to the court, shall be filed, conditioned to
12 perform the judgment of the court. Except in the case last named an
13 appeal shall not be a stay: PROVIDED, HOWEVER, That whenever the board
14 has made any decision and order reversing an order of the supervisor of
15 industrial insurance on questions of law or mandatory administrative
16 actions of the director, the department shall have the right of appeal
17 to the superior court.

18 **Sec. 35.** RCW 51.52.120 and 1990 c 15 s 1 are each amended to read
19 as follows:

20 (1) It shall be unlawful for an attorney engaged in the
21 representation of any worker or beneficiary to charge for services in
22 the department any fee in excess of a reasonable fee, of not more than
23 thirty percent of the increase in the award secured by the attorney's
24 services. Such reasonable fee shall be fixed by the director or the
25 director's designee for services performed by an attorney for such
26 worker or beneficiary, if written application therefor is made by the
27 attorney, worker, or beneficiary within one year from the date the
28 final decision and order of the department is communicated to the party
29 making the application.

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

23 **Sec. 36.** RCW 51.52.130 and 1982 c 63 s 23 are each amended to read
24 as follows:

25 If, on appeal to the court from the decision and order of the
26 board, said decision and order is reversed or modified and additional
27 relief is granted to a worker or beneficiary, or in cases where a party
28 other than the worker or beneficiary is the appealing party and the
29 worker's or beneficiary's right to relief is sustained by the court, a

1 reasonable fee for the services of the worker's or beneficiary's
2 attorney shall be fixed by the court. In fixing the fee the court
3 shall take into consideration the fee or fees, if any, fixed by the
4 director and the board for such attorney's services before the
5 department and the board. If the court finds that the fee fixed by the
6 director or by the board is inadequate for services performed before
7 the department or board, or if the director or the board has fixed no
8 fee for such services, then the court shall fix a fee for the
9 attorney's services before the department, or the board, as the case
10 may be, in addition to the fee fixed for the services in the court. If
11 the decision and order of the board is reversed or modified and if the
12 accident fund is affected by the litigation then the attorney's fee
13 fixed by the court for services before the court only, and the fees of
14 medical and other witnesses and the costs shall be payable out of the
15 administrative fund of the department. (~~In the case of self-insured
16 employers, if the decision and order of the board is reversed or
17 modified resulting in additional benefits by the litigation that would
18 be paid from the accident fund if the employer were not self-insured,
19 then the attorney fees fixed by the court for services before the
20 court, only, and the fees of medical and other witnesses and the costs
21 shall be payable directly by the self-insured employer.~~)

22 NEW SECTION. **Sec. 37.** A new section is added to chapter 51.28 RCW
23 to read as follows:

24 (1) Every employer subject to the provisions of this title shall
25 post and keep posted in a conspicuous place or places in and about his
26 or her place or places of business a reasonable number of typewritten
27 or printed notices of compliance substantially identical to a form
28 prescribed by the director, stating that such employer is subject to
29 the provisions of this title.

1 (2) Any employer who has failed to open an account with the
2 department shall not post or permit to be posted on or about his or her
3 place of business or premises any notice of compliance with this title
4 and any willful violation of this subsection by any officer or
5 supervisory employee of an employer shall be a misdemeanor.

6 NEW SECTION. **Sec. 38.** A new section is added to chapter 51.98 RCW
7 to read as follows:

8 After June 30, 1992, all claims filed under this title, without
9 regard to the date of injury, shall be administered by the state fund.
10 However, injuries occurring before July 1, 1992, shall be adjudicated
11 and finally determined under the law in effect at the time of injury,
12 unless otherwise provided in this title.

13 NEW SECTION. **Sec. 39.** The following acts or parts of acts are
14 each repealed:

15 (1) RCW 51.14.010 and 1971 ex.s. c 289 s 26;

16 (2) RCW 51.14.020 and 1990 c 209 s 1, 1986 c 57 s 1, 1977 ex.s. c
17 323 s 9, 1972 ex.s. c 43 s 16, & 1971 ex.s. c 289 s 27;

18 (3) RCW 51.14.030 and 1977 ex.s. c 323 s 10 & 1971 ex.s. c 289 s
19 28;

20 (4) RCW 51.14.040 and 1971 ex.s. c 289 s 29;

21 (5) RCW 51.14.050 and 1971 ex.s. c 289 s 30;

22 (6) RCW 51.14.060 and 1986 c 57 s 2 & 1971 ex.s. c 289 s 31;

23 (7) RCW 51.14.070 and 1986 c 57 s 3 & 1971 ex.s. c 289 s 36;

24 (8) RCW 51.14.073 and 1986 c 57 s 4;

25 (9) RCW 51.14.077 and 1986 c 57 s 6;

26 (10) RCW 51.14.080 and 1986 c 57 s 7 & 1971 ex.s. c 289 s 32;

27 (11) RCW 51.14.090 and 1983 c 21 s 1 & 1971 ex.s. c 289 s 33;

28 (12) RCW 51.14.095 and 1983 c 21 s 2;

- 1 (13) RCW 51.14.100 and 1971 ex.s. c 289 s 34;
2 (14) RCW 51.14.110 and 1971 ex.s. c 289 s 35;
3 (15) RCW 51.14.150 and 1983 c 174 s 2 & 1982 c 191 s 7;
4 (16) RCW 51.14.160 and 1983 c 174 s 3 & 1982 c 191 s 8;
5 (17) RCW 51.32.190 and 1982 1st ex.s. c 20 s 3, 1977 ex.s. c 350 s
6 54, 1972 ex.s. c 43 s 25, & 1971 ex.s. c 289 s 47;
7 (18) RCW 51.32.195 and 1987 c 290 s 1;
8 (19) RCW 51.32.200 and 1971 ex.s. c 289 s 48;
9 (20) RCW 51.36.085 and 1987 c 316 s 4;
10 (21) RCW 51.44.140 and 1972 ex.s. c 43 s 30 & 1971 ex.s. c 289 s
11 58;
12 (22) RCW 51.44.150 and 1971 ex.s. c 289 s 59;
13 (23) RCW 51.48.017 and 1985 c 347 s 3 & 1971 ex.s. c 289 s 66; and
14 (24) RCW 51.48.110 and 1986 c 56 s 1 & 1971 ex.s. c 289 s 65.

15 NEW SECTION. **Sec. 40.** This act shall take effect July 1, 1992.