
ENGROSSED SENATE BILL 6317

State of Washington 58th Legislature 2004 Regular Session

By Senators Honeyford, T. Sheldon, Hewitt, Mulliken and Rasmussen

Read first time 01/16/2004. Referred to Committee on Commerce & Trade.

1 AN ACT Relating to authorizing self-insurers to make claim
2 decisions and actively participate in workers' compensation claims;
3 amending RCW 51.04.020, 51.04.030, 51.04.040, 51.04.085, 51.08.040,
4 51.08.173, 51.14.110, 51.14.120, 51.14.130, 51.16.120, 51.24.030,
5 51.24.050, 51.24.060, 51.24.070, 51.24.080, 51.24.090, 51.28.010,
6 51.28.020, 51.28.030, 51.28.040, 51.28.055, 51.28.060, 51.28.070,
7 51.32.010, 51.32.040, 51.32.055, 51.32.060, 51.32.080, 51.32.095,
8 51.32.110, 51.32.160, 51.32.195, 51.32.210, 51.32.220, 51.32.225,
9 51.32.230, 51.32.240, 51.32.250, 51.36.010, 51.36.015, 51.36.020,
10 51.36.060, 51.36.070, 51.48.017, 51.48.040, 51.48.040, 51.48.080,
11 51.52.050, 51.52.070, and 51.52.080; reenacting and amending RCW
12 51.52.060; adding new sections to chapter 51.14 RCW; creating a new
13 section; repealing RCW 51.32.190; providing effective dates; and
14 providing an expiration date.

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

16 **Sec. 1.** RCW 51.04.020 and 2000 c 5 s 14 are each amended to read
17 as follows:

18 (1) The director shall:

1 ~~((1))~~ (a) Establish and adopt rules governing the administration
2 of this title and the auditing of self-insured employers under RCW
3 51.48.040 (4) and (5);

4 ~~((2))~~ (b) Ascertain and establish the amounts to be paid into and
5 out of the accident fund;

6 ~~((3))~~ (c) Regulate the proof of accident and extent thereof, the
7 proof of death and the proof of relationship and the extent of
8 dependency;

9 ~~((4))~~ (d) Supervise the medical, surgical, and hospital treatment
10 to the intent that it may be in all cases efficient and up to the
11 recognized standard of modern surgery;

12 ~~((5))~~ (e) Issue proper receipts for moneys received and
13 certificates for benefits accrued or accruing;

14 ~~((6))~~ (f) Investigate the cause of all serious injuries and
15 report to the governor from time to time any violations or laxity in
16 performance of protective statutes or regulations coming under the
17 observation of the department;

18 ~~((7))~~ (g) Compile statistics which will afford reliable
19 information upon which to base operations of all divisions under the
20 department;

21 ~~((8))~~ (h) Make an annual report to the governor of the workings
22 of the department;

23 ~~((9))~~ (i) Be empowered to enter into agreements with the
24 appropriate agencies of other states relating to conflicts of
25 jurisdiction where the contract of employment is in one state and
26 injuries are received in the other state, and insofar as permitted by
27 the Constitution and laws of the United States, to enter into similar
28 agreements with the provinces of Canada; and

29 ~~((10))~~ (j) Designate a medical director who is licensed under
30 chapter 18.57 or 18.71 RCW.

31 (2) Self-insured employers shall be vested with the powers and
32 duties necessary to administer all aspects of industrial injury or
33 occupational disease claims of their injured workers without prior
34 approval or consent of the department subject to the provisions of this
35 title.

36 **Sec. 2.** RCW 51.04.030 and 1998 c 230 s 1 are each amended to read
37 as follows:

1 (1) The director shall supervise the providing of prompt and
2 efficient care and treatment, including care provided by physician
3 assistants governed by the provisions of chapters 18.57A and 18.71A
4 RCW, acting under a supervising physician, and including chiropractic
5 care, to workers injured during the course of their employment at the
6 least cost consistent with promptness and efficiency, without
7 discrimination or favoritism, and with as great uniformity as the
8 various and diverse surrounding circumstances and locations of
9 industries will permit and to that end shall, from time to time,
10 establish and adopt and supervise the administration of printed forms,
11 rules, (~~regulations,~~) and practices for the furnishing of such care
12 and treatment(~~(:—PROVIDED, That)~~). However, the medical coverage
13 decisions of the department do not constitute a "rule" as used in RCW
14 34.05.010(16), nor are such decisions subject to the rule-making
15 provisions of chapter 34.05 RCW except that criteria for establishing
16 medical coverage decisions shall be adopted by rule after consultation
17 with the workers' compensation advisory committee established in RCW
18 51.04.110(~~(:—PROVIDED FURTHER, That)~~). The department or self-
19 insurer, as the case may be, may recommend to an injured worker
20 particular health care services and providers where specialized
21 treatment is indicated or where cost-effective payment levels or rates
22 are obtained by the department(~~(:—AND PROVIDED FURTHER, That)~~) or
23 self-insurer. The department may enter into contracts for goods and
24 services including, but not limited to, durable medical equipment so
25 long as statewide access to quality service is maintained for injured
26 workers.

27 (2) The director shall, in consultation with interested persons,
28 establish and, in his or her discretion, periodically change as may be
29 necessary, and make available a fee schedule of the maximum charges to
30 be made by any physician, surgeon, chiropractor, hospital, druggist,
31 physicians' assistants as defined in chapters 18.57A and 18.71A RCW,
32 acting under a supervising physician or other agency or person
33 rendering services to injured workers. The department shall coordinate
34 with other state purchasers of health care services to establish as
35 much consistency and uniformity in billing and coding practices as
36 possible, taking into account the unique requirements and differences
37 between programs. No service covered under this title, including
38 services provided to injured workers, whether aliens or other injured

1 workers, who are not residing in the United States at the time of
2 receiving the services, shall be charged or paid at a rate or rates
3 exceeding those specified in such fee schedule, and no contract
4 providing for greater fees shall be valid as to the excess. The
5 establishment of such a schedule, exclusive of conversion factors, does
6 not constitute "agency action" as used in RCW 34.05.010(3), nor does
7 such a fee schedule constitute a "rule" as used in RCW 34.05.010(16).

8 (3) The director or self-insurer, as the case may be, shall make a
9 record of the commencement of every disability and the termination
10 thereof and, when bills are rendered for the care and treatment of
11 injured workers, shall approve and pay those which conform to the
12 adopted rules, (~~regulations,~~) established fee schedules, and
13 practices of the director and may reject any bill or item thereof
14 incurred in violation of the principles laid down in this section or
15 the rules, regulations, or the established fee schedules and rules and
16 regulations adopted under it.

17 **Sec. 3.** RCW 51.04.040 and 1987 c 316 s 1 are each amended to read
18 as follows:

19 The director and (~~his or her~~) the director's authorized
20 assistants shall have power to issue subpoenas to enforce the
21 attendance and testimony of witnesses and the production and
22 examination of books, papers, photographs, tapes, and records before
23 the department or a self-insurer in connection with any claim made to
24 the department or a self-insurer, any billing submitted to the
25 department or a self-insurer, or the assessment or collection of
26 premiums. The director shall issue a subpoena on behalf of a self-
27 insurer upon application demonstrating a reasonable basis for the
28 issuance of a subpoena. The superior court shall have the power to
29 enforce any such subpoena by proper proceedings.

30 **Sec. 4.** RCW 51.04.085 and 1977 ex.s. c 323 s 26 are each amended
31 to read as follows:

32 The department or the self-insurer, as the case may be, may, at any
33 time, on receipt of written authorization, transmit amounts payable to
34 a claimant, beneficiary, or any supplier of goods or services to the
35 account of such person in a bank or other financial institution
36 regulated by state or federal authority.

1 **Sec. 5.** RCW 51.08.040 and 1961 c 23 s 51.08.040 are each amended
2 to read as follows:

3 For purposes of this title, "department" means the department of
4 labor and industries, its director, and its director's appointees and
5 employees.

6 **Sec. 6.** RCW 51.08.173 and 1983 c 174 s 1 are each amended to read
7 as follows:

8 "Self-insurer" or "self-insured employer" means an employer or
9 group of employers which has been authorized under this title to carry
10 its own liability to its employees covered by this title and includes
11 its administrative organization.

12 **Sec. 7.** RCW 51.14.110 and 1971 ex.s. c 289 s 35 are each amended
13 to read as follows:

14 Every self-insurer shall maintain a record of all payments of
15 compensation made under this title. In the event of an audit by the
16 department or protest by the injured worker, the self-insurer shall
17 furnish to the ((director)) department all information ((he)) it has in
18 ((his)) its possession ((as to any disputed claim)), upon forms
19 approved by the ((director)) department, within twenty days of receipt
20 of a written request from the department. Every self-insurer shall
21 monthly report to the department, upon forms approved by the
22 department, all claims filed or closed during the previous month, and
23 any such information necessary to conduct the audits of self-insured
24 employers.

25 **Sec. 8.** RCW 51.14.120 and 2001 c 152 s 1 are each amended to read
26 as follows:

27 (1) The self-insurer shall provide, when authorized under RCW
28 51.28.070, a copy of the employee's claim file at no cost within
29 fifteen days of receipt of a request by the employee or the employee's
30 representative, and shall provide the physician performing an
31 examination with all relevant medical records from the worker's claim
32 file, but only to the extent required of the department under RCW
33 51.36.070. If the self-insured employer determines that release of the
34 claim file to an unrepresented worker in whole or in part((r)) may not
35 be in the worker's best interests, the employer must ~~((submit a request~~

1 ~~for denial with))~~ issue an order under section 10 of this act that
2 includes an explanation (~~along with a copy of that portion of the~~
3 ~~claim file not previously provided within twenty days after the request~~
4 ~~from))~~ to the worker. In the case of second or subsequent requests, a
5 reasonable charge for copying may be made. The self-insurer shall
6 provide the entire contents of the claim file unless the request is for
7 only a particular portion of the file. Any new material added to the
8 claim file after the initial request shall be provided under the same
9 terms and conditions as the initial request.

10 (2) The self-insurer shall transmit notice to the department of any
11 protest or appeal by an employee relating to the administration of an
12 industrial injury or occupational disease claim under this chapter
13 within five working days of receipt. The date that the protest or
14 appeal is received by the self-insurer shall be deemed to be the date
15 the protest is received by the department for the purpose of RCW
16 51.52.050.

17 (~~(3) The self-insurer shall submit a medical report with the~~
18 ~~request for closure of a claim under this chapter.))~~

19 **Sec. 9.** RCW 51.14.130 and 1993 c 122 s 3 are each amended to read
20 as follows:

21 The self-insurer shall (~~request allowance or denial of))~~ allow or
22 deny a claim within sixty days from the date that the claim is filed(~~(-~~
23 ~~if the self-insurer fails to act within sixty days, the department~~
24 ~~shall promptly intervene and adjudicate the claim))~~ unless extended for
25 up to ninety days by notice to the worker for good cause. If the self-
26 insurer fails to allow or deny a claim within the specified time
27 period, the claim shall be deemed allowed.

28 NEW SECTION. **Sec. 10.** A new section is added to chapter 51.14 RCW
29 to read as follows:

30 (1) Self-insured employers shall issue orders encompassing their
31 claims decisions under the same circumstances and parameters and to the
32 same force and effect as orders issued by the department so long as
33 such orders conform to the requirements of RCW 51.52.050. This
34 includes but is not limited to allowance, denial and reopening of
35 claims, payment of monthly compensation, provision of medical care and
36 treatment, specification of conditions allowed, denied, or segregated

1 under the claim, closure of claims with or without award for permanent
2 disability, and reduction, suspension, or denial of benefits pursuant
3 to RCW 51.32.110. However, a self-insurer's order determining that a
4 worker shall be placed on the pension rolls as a permanent totally
5 disabled worker shall not make any factual findings beyond eligibility
6 for the pension rolls and the effective date of such eligibility.

7 (2) If a worker or beneficiary requests reconsideration or appeals
8 a self-insurer order, the department may review the order under RCW
9 51.52.050, or may direct submission of further evidence under RCW
10 51.52.050 and 51.52.060. A subsequent order issued by the department
11 may be appealed by any aggrieved party.

12 **Sec. 11.** RCW 51.16.120 and 1984 c 63 s 1 are each amended to read
13 as follows:

14 (1) Whenever a worker has a previous bodily disability from any
15 previous injury or disease, whether known or unknown to the employer,
16 and shall suffer a further disability from injury or occupational
17 disease in employment covered by this title and become totally and
18 permanently disabled from the combined effects thereof or die when
19 death was substantially accelerated by the combined effects thereof,
20 then the experience record of an employer insured with the state fund
21 at the time of said further injury or disease shall be charged and a
22 self-insured employer shall pay directly into the reserve fund only the
23 accident cost which would have resulted solely from said further injury
24 or disease, had there been no preexisting disability, and which
25 accident cost shall be based upon an evaluation of the disability by
26 medical experts. The difference between the charge thus assessed to
27 such employer at the time of said further injury or disease and the
28 total cost of the pension reserve shall be assessed against the second
29 injury fund. The department shall pass upon the application of this
30 section in all state fund cases where benefits are paid for total
31 permanent disability or death and issue an order thereon appealable by
32 the employer. Pending outcome of such appeal the transfer or payment
33 shall be made as required by such order. In cases involving self-
34 insurers, the department shall issue an order appealable by the
35 employer passing on the application of this section upon a written
36 request by the self-insurer. When this section applies, the department

1 shall reimburse the self-insurer from the second injury fund all
2 monthly compensation paid to the worker or beneficiary beginning with
3 the first date of permanent total disability or death of the worker.

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. 12.** RCW 51.24.030 and 1995 c 199 s 2 are each amended to read
20 as follows:

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

25 (2) In every action brought under this section, the plaintiff shall
26 give notice to the department or self-insurer, as the case may be, when
27 the action is filed. The department or self-insurer may file a notice
28 of statutory interest in recovery. When such notice has been filed by
29 the department or self-insurer, the parties shall thereafter serve
30 copies of all notices, motions, pleadings, and other process on the
31 department or self-insurer. The department or self-insurer may then
32 intervene as a party in the action to protect its statutory interest in
33 recovery.

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

1 (4) Damages recoverable by a worker or beneficiary pursuant to the
2 underinsured motorist coverage of an insurance policy shall be subject
3 to this chapter only if the owner of the policy is the employer of the
4 injured worker.

5 (5) For the purposes of this chapter, "recovery" includes all
6 damages except loss of consortium.

7 **Sec. 13.** RCW 51.24.050 and 1995 c 199 s 3 are each amended to read
8 as follows:

9 (1) An election not to proceed against the third person operates as
10 an assignment of the cause of action to the department or self-insurer,
11 as the case may be, which may prosecute or compromise the action in its
12 discretion in the name of the injured worker, beneficiary or legal
13 representative.

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

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

22 (4) Any recovery made by the department or self-insurer shall be
23 distributed as follows:

24 (a) The department or self-insurer, as the case may be, shall be
25 paid the expenses incurred in making the recovery including reasonable
26 costs of legal services;

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

32 (c) The department and/or self-insurer shall be paid the
33 compensation and benefits paid to or on behalf of the injured worker or
34 beneficiary by the department and/or self-insurer; and

35 (d) The injured worker or beneficiary shall be paid any remaining
36 balance.

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

8 (6) When the cause of action has been assigned to the self-insurer
9 and compensation and benefits have been paid and/or are payable from
10 state funds for the same injury:

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

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

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

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

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

27 **Sec. 14.** RCW 51.24.060 and 2001 c 146 s 9 are each amended to read
28 as follows:

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

32 (a) The costs and reasonable attorneys' fees shall be paid
33 proportionately by the injured worker or beneficiary and the department
34 and/or self-insurer(~~:- PROVIDED, That~~), as the case may be. However,
35 the department and/or self-insurer may require court approval of costs
36 and attorneys' fees or may petition a court for determination of the
37 reasonableness of costs and attorneys' fees;

1 (b) The injured worker or beneficiary shall be paid twenty-five
2 percent of the balance of the award(~~(: PROVIDED, That)~~). However, in
3 the event of a compromise and settlement by the parties, the injured
4 worker or beneficiary may agree to a sum less than twenty-five percent;

5 (c) The department and/or self-insurer shall be paid the balance of
6 the recovery made, but only to the extent necessary to reimburse the
7 department and/or self-insurer for benefits paid;

8 (i) The department and/or self-insurer shall bear its proportionate
9 share of the costs and reasonable attorneys' fees incurred by the
10 worker or beneficiary to the extent of the benefits paid under this
11 title(~~(: PROVIDED, That)~~). However, the department's and/or self-
12 insurer's proportionate share shall not exceed one hundred percent of
13 the costs and reasonable attorneys' fees;

14 (ii) The department's and/or self-insurer's proportionate share of
15 the costs and reasonable attorneys' fees shall be determined by
16 dividing the gross recovery amount into the benefits paid amount and
17 multiplying this percentage times the costs and reasonable attorneys'
18 fees incurred by the worker or beneficiary;

19 (iii) The department's and/or self-insurer's reimbursement share
20 shall be determined by subtracting their proportionate share of the
21 costs and reasonable attorneys' fees from the benefits paid amount;

22 (d) Any remaining balance shall be paid to the injured worker or
23 beneficiary; and

24 (e) Thereafter no payment shall be made to or on behalf of a worker
25 or beneficiary by the department and/or self-insurer for such injury
26 until the amount of any further compensation and benefits shall equal
27 any such remaining balance minus the department's and/or self-insurer's
28 proportionate share of the costs and reasonable attorneys' fees in
29 regards to the remaining balance. This proportionate share shall be
30 determined by dividing the gross recovery amount into the remaining
31 balance amount and multiplying this percentage times the costs and
32 reasonable attorneys' fees incurred by the worker or beneficiary.
33 Thereafter, such benefits shall be paid by the department and/or self-
34 insurer to or on behalf of the worker or beneficiary as though no
35 recovery had been made from a third person.

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

1 (3) The department or self-insurer, as the case may be, has sole
2 discretion to compromise the amount of its lien. In deciding whether
3 or to what extent to compromise its lien, the department or self-
4 insurer shall consider at least the following:

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

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

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

13 (4) In an action under this section, the self-insurer may act on
14 behalf and for the benefit of the department to the extent of any
15 compensation and benefits paid or payable from state funds.

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

22 (6) The distribution of any recovery made by award or settlement of
23 the third party action shall be confirmed by ~~((department))~~ order of
24 the department or self-insurer, as the case may be, served by
25 registered or certified mail, and shall be subject to chapter 51.52
26 RCW. In the event the order of distribution becomes final under
27 chapter 51.52 RCW, the ~~((director or the director's designee))~~
28 department or self-insurer, as the case may be, may file with the clerk
29 of any county within the state a warrant in the amount of the sum
30 representing the unpaid lien plus interest accruing from the date the
31 order became final. The clerk of the county in which the warrant is
32 filed shall immediately designate a superior court cause number for
33 such warrant and the clerk shall cause to be entered in the judgment
34 docket under the superior court cause number assigned to the warrant,
35 the name of such worker or beneficiary mentioned in the warrant, the
36 amount of the unpaid lien plus interest accrued and the date when the
37 warrant was filed. The amount of such warrant as docketed shall become
38 a lien upon the title to and interest in all real and personal property

1 of the injured worker or beneficiary against whom the warrant is
2 issued, the same as a judgment in a civil case docketed in the office
3 of such clerk. The sheriff shall then proceed in the same manner and
4 with like effect as prescribed by law with respect to execution or
5 other process issued against rights or property upon judgment in the
6 superior court. Such warrant so docketed shall be sufficient to
7 support the issuance of writs of garnishment in favor of the department
8 or self-insurer, as the case may be, in the manner provided by law in
9 the case of judgment, wholly or partially unsatisfied. The clerk of
10 the court shall be entitled to a filing fee under RCW 36.18.012(10),
11 which shall be added to the amount of the warrant. A copy of such
12 warrant shall be mailed to the injured worker or beneficiary within
13 three days of filing with the clerk.

14 (7) The (~~director, or the director's designee,~~) department or
15 self-insurer, as the case may be, may issue to any person, firm,
16 corporation, municipal corporation, political subdivision of the state,
17 public corporation, or agency of the state, a notice and order to
18 withhold and deliver property of any kind if he or she has reason to
19 believe that there is in the possession of such person, firm,
20 corporation, municipal corporation, political subdivision of the state,
21 public corporation, or agency of the state, property which is due,
22 owing, or belonging to any worker or beneficiary upon whom a warrant
23 has been served by the department or self-insurer for payments due to
24 the state fund or self-insurer. The notice and order to withhold and
25 deliver shall be served by the sheriff of the county or by the
26 sheriff's deputy; by certified mail, return receipt requested; or by
27 any authorized representatives of the (~~director~~) department or self-
28 insurer. Any person, firm, corporation, municipal corporation,
29 political subdivision of the state, public corporation, or agency of
30 the state upon whom service has been made shall answer the notice
31 within twenty days exclusive of the day of service, under oath and in
32 writing, and shall make true answers to the matters inquired of in the
33 notice and order to withhold and deliver. In the event there is in the
34 possession of the party named and served with such notice and order,
35 any property which may be subject to the claim of the department or
36 self-insurer, such property shall be delivered forthwith to the
37 (~~director or the director's authorized representative~~) department or
38 self-insurer, as the case may be, upon demand. If the party served and

1 named in the notice and order fails to answer the notice and order
2 within the time prescribed in this section, the court may, after the
3 time to answer such order has expired, render judgment by default
4 against the party named in the notice for the full amount claimed by
5 the director or self-insurer in the notice together with costs. In the
6 event that a notice to withhold and deliver is served upon an employer
7 and the property found to be subject thereto is wages, the employer may
8 assert in the answer to all exemptions provided for by chapter 6.27 RCW
9 to which the wage earner may be entitled.

10 **Sec. 15.** RCW 51.24.070 and 1984 c 218 s 6 are each amended to read
11 as follows:

12 (1) The department or self-insurer, as the case may be, may require
13 the injured worker or beneficiary to exercise the right of election
14 under this chapter by serving a written demand by registered mail,
15 certified mail, or personal service on the worker or beneficiary.

16 (2) Unless an election is made within sixty days of the receipt of
17 the demand, and unless an action is instituted or settled within the
18 time granted by the department or self-insurer, the injured worker or
19 beneficiary is deemed to have assigned the action to the department or
20 self-insurer, as the case may be. The department or self-insurer shall
21 allow the worker or beneficiary at least ninety days from the election
22 to institute or settle the action. When a beneficiary is a minor child
23 the demand shall be served upon the legal custodian or guardian of such
24 beneficiary.

25 (3) If an action which has been filed is not diligently prosecuted,
26 the department or self-insurer, as the case may be, may petition the
27 court in which the action is pending for an order assigning the cause
28 of action to the department or self-insurer. Upon a sufficient showing
29 of a lack of diligent prosecution the court in its discretion may issue
30 the order.

31 (4) If the department or self-insurer has taken an assignment of
32 the third party cause of action under subsection (2) of this section,
33 the injured worker or beneficiary may, at the discretion of the
34 department or self-insurer, exercise a right of reelection and assume
35 the cause of action subject to reimbursement of litigation expenses
36 incurred by the department or self-insurer.

1 **Sec. 16.** RCW 51.24.080 and 1977 ex.s. c 85 s 6 are each amended to
2 read as follows:

3 (1) If the injured worker or beneficiary elects to seek damages
4 from the third person, notice of the election must be given to the
5 department or self-insurer, as the case may be. The notice shall be by
6 registered mail, certified mail, or personal service. If an action is
7 filed by the injured worker or beneficiary, a copy of the complaint
8 must be sent by registered mail to the department or self-insurer, as
9 the case may be.

10 (2) A return showing service of the notice on the department or
11 self-insurer shall be filed with the court but shall not be part of the
12 record except as necessary to give notice to the defendant of the lien
13 imposed by RCW 51.24.060(2).

14 **Sec. 17.** RCW 51.24.090 and 1995 c 199 s 5 are each amended to read
15 as follows:

16 (1) Any compromise or settlement of the third party cause of action
17 by the injured worker or beneficiary which results in less than the
18 entitlement under this title is void unless made with the written
19 approval of the department or self-insurer(~~(:PROVIDED, That)~~), as the
20 case may be. However, for the purposes of this chapter, "entitlement"
21 means benefits and compensation paid and estimated by the department or
22 self-insurer, as the case may be, to be paid in the future.

23 (2) If a compromise or settlement is void because of subsection (1)
24 of this section, the department or self-insurer, as the case may be,
25 may petition the court in which the action was filed for an order
26 assigning the cause of action to the department or self-insurer. If an
27 action has not been filed, the department or self-insurer may proceed
28 as provided in chapter 7.24 RCW.

29 **Sec. 18.** RCW 51.28.010 and 2001 c 231 s 1 are each amended to read
30 as follows:

31 (1) Whenever any accident occurs to any worker it shall be the duty
32 of such worker or someone in his or her behalf to forthwith report such
33 accident to his or her employer, superintendent, or supervisor in
34 charge of the work, and of the employer to at once report such accident
35 and the injury resulting therefrom to the department pursuant to RCW

1 51.28.025 where the worker has received treatment from a physician, has
2 been hospitalized, disabled from work, or has died as the apparent
3 result of such accident and injury.

4 (2) Upon receipt of such notice of accident, the department or
5 self-insurer, as the case may be, shall immediately forward to the
6 worker or his or her beneficiaries or dependents notification, in
7 nontechnical language, of their rights under this title. The notice
8 must specify the worker's right to receive health services from a
9 physician of the worker's choice under RCW 51.36.010, including
10 chiropractic services under RCW 51.36.015, and must list the types of
11 providers authorized to provide these services. The notice must be
12 given on department forms.

13 **Sec. 19.** RCW 51.28.020 and 2001 c 231 s 2 are each amended to read
14 as follows:

15 (1)((+a)) Where a worker is entitled to compensation under this
16 title he or she shall file with the department or his or her self-
17 insured employer, as the case may be, his or her application for such,
18 together with the certificate of the physician who attended him or her.
19 An application form developed by the department shall include a notice
20 specifying the worker's right to receive health services from a
21 physician of the worker's choice under RCW 51.36.010, including
22 chiropractic services under RCW 51.36.015, and listing the types of
23 providers authorized to provide these services.

24 ((+b)) (2) The physician who attended the injured worker shall
25 inform the injured worker of his or her rights under this title and
26 lend all necessary assistance in making this application for
27 compensation and such proof of other matters as required by the rules
28 of the department without charge to the worker. The department shall
29 provide physicians with a manual which outlines the procedures to be
30 followed in applications for compensation involving occupational
31 diseases, and which describes claimants' rights and responsibilities
32 related to occupational disease claims.

33 ~~((2) If application for compensation is made to a self-insured~~
34 ~~employer, he or she shall forthwith send a copy of the application to~~
35 ~~the department.))~~

1 **Sec. 20.** RCW 51.28.030 and 1972 ex.s. c 43 s 17 are each amended
2 to read as follows:

3 Where death results from injury the parties entitled to
4 compensation under this title, or someone in their behalf, shall make
5 application for the same to the department or self-insurer as the case
6 may be, which application must be accompanied with proof of death and
7 proof of relationship showing the parties to be entitled to
8 compensation under this title, certificates of attending physician, if
9 any, and such proof as required by the rules of the department.

10 Upon receipt of notice of accident under RCW 51.28.010, the
11 director or self-insurer, as the case may be, shall immediately forward
12 to the party or parties required to make application for compensation
13 under this section, notification on department forms, in nontechnical
14 language, of their rights under this title.

15 **Sec. 21.** RCW 51.28.040 and 1977 ex.s. c 199 s 1 are each amended
16 to read as follows:

17 If change of circumstances warrants an increase or rearrangement of
18 compensation, like application shall be made therefor to the department
19 or self-insurer, as the case may be. Where the application has been
20 granted, compensation and other benefits if in order shall be allowed
21 for periods of time up to sixty days prior to the receipt of such
22 application.

23 **Sec. 22.** RCW 51.28.055 and 2003 2nd sp.s. c 2 s 1 are each amended
24 to read as follows:

25 (1) Except as provided in subsection (2) of this section for claims
26 filed for occupational hearing loss, claims for occupational disease or
27 infection to be valid and compensable must be filed within two years
28 following the date the worker had written notice from a physician: (a)
29 Of the existence of his or her occupational disease, and (b) that a
30 claim for disability benefits may be filed. The notice shall also
31 contain a statement that the worker has two years from the date of the
32 notice to file a claim. If the employer is self-insured, the physician
33 shall file the notice with the self-insurer. If the employer is a
34 state fund employer, the physician shall file the notice with the
35 department. The department or self-insurer shall send a copy to the
36 worker ((and to the self-insurer if the worker's employer is self-

1 insured)). However, a claim is valid if it is filed within two years
2 from the date of death of the worker suffering from an occupational
3 disease.

4 (2)(a) Except as provided in (b) of this subsection, to be valid
5 and compensable, claims for hearing loss due to occupational noise
6 exposure must be filed within two years of the date of the worker's
7 last injurious exposure to occupational noise in employment covered
8 under this title or within one year of September 10, 2003, whichever is
9 later.

10 (b) A claim for hearing loss due to occupational noise exposure
11 that is not timely filed under (a) of this subsection can only be
12 allowed for medical aid benefits under chapter 51.36 RCW.

13 (3) The department may adopt rules to implement this section.

14 **Sec. 23.** RCW 51.28.060 and 1977 ex.s. c 350 s 35 are each amended
15 to read as follows:

16 A dependent shall at all times furnish the department or self-
17 insurer, as the case may be, with proof satisfactory to the
18 (~~director~~) department or self-insurer of the nature, amount and
19 extent of the contribution made by the deceased worker.

20 Proof of dependency by any beneficiary residing without the United
21 States shall be made before the nearest United States consul or
22 consular agency, under the seal of such consul or consular agent, and
23 the department or self-insurer may cause any warrant or warrants to
24 which such beneficiary is entitled to be transmitted to the beneficiary
25 through the nearest United States consul or consular agent.

26 **Sec. 24.** RCW 51.28.070 and 1990 c 209 s 2 are each amended to read
27 as follows:

28 Information contained in the claim files and records of injured
29 workers, under the provisions of this title, shall be deemed
30 confidential and shall not be open to public inspection (other than to
31 public employees in the performance of their official duties), but
32 representatives of a claimant, be it an individual or an organization,
33 may review a claim file or receive specific information therefrom upon
34 the presentation of the signed authorization of the claimant. A
35 claimant may review his or her claim file if the (~~director~~)
36 department or self-insurer, as the case may be, determines, pursuant to

1 criteria adopted by rule, that the review is in the claimant's
2 interest. Employers or their duly authorized representatives may
3 review any files of their own injured workers in connection with any
4 pending claims. Physicians treating or examining workers claiming
5 benefits under this title, or physicians giving medical advice to the
6 department or self-insurer regarding any claim may, at the discretion
7 of the department or self-insurer, inspect the claim files and records
8 of injured workers, and other persons may make such inspection, at the
9 department's or self-insurer's discretion, when such persons are
10 rendering assistance to the department or self-insurer at any stage of
11 the proceedings on any matter pertaining to the administration of this
12 title.

13 **Sec. 25.** RCW 51.32.010 and 1977 ex.s. c 350 s 37 are each amended
14 to read as follows:

15 Each worker injured in the course of his or her employment, or his
16 or her family or dependents in case of death of the worker, shall
17 receive compensation in accordance with this chapter, and, except as in
18 this title otherwise provided, such payment shall be in lieu of any and
19 all rights of action whatsoever against any person whomsoever(~~+~~
20 ~~PROVIDED, That~~)). However, if an injured worker, or the surviving
21 spouse of an injured worker shall not have the legal custody of a child
22 for, or on account of whom payments are required to be made under this
23 title, such payment or payments shall be made to the person or persons
24 having the legal custody of such child but only for the periods of time
25 after the department or self-insurer, as the case may be, has been
26 notified of the fact of such legal custody, and it shall be the duty of
27 any such person or persons receiving payments because of legal custody
28 of any child immediately to notify the department or self-insurer, as
29 the case may be, of any change in such legal custody.

30 **Sec. 26.** RCW 51.32.040 and 2003 c 379 s 27 are each amended to
31 read as follows:

32 (1) Except as provided in RCW 43.20B.720, 72.09.111, 74.20A.260,
33 and 51.32.380, no money paid or payable under this title shall, before
34 the issuance and delivery of the check or warrant, be assigned,
35 charged, or taken in execution, attached, garnished, or pass or be paid
36 to any other person by operation of law, any form of voluntary

1 assignment, or power of attorney. Any such assignment or charge is
2 void unless the transfer is to a financial institution at the request
3 of a worker or other beneficiary and made in accordance with RCW
4 51.32.045.

5 (2)(a) If any worker suffers (i) a permanent partial injury and
6 dies from some other cause than the accident which produced the injury
7 before he or she receives payment of the award for the permanent
8 partial injury or (ii) any other injury before he or she receives
9 payment of any monthly installment covering any period of time before
10 his or her death, the amount of the permanent partial disability award
11 or the monthly payment, or both, shall be paid to the surviving spouse
12 or the child or children if there is no surviving spouse. If there is
13 no surviving spouse and no child or children, the award or the amount
14 of the monthly payment shall be paid by the department or self-insurer,
15 as the case may be, and distributed consistent with the terms of the
16 decedent's will or, if the decedent dies intestate, consistent with the
17 terms of RCW 11.04.015.

18 (b) If any worker suffers an injury and dies from it before he or
19 she receives payment of any monthly installment covering time loss for
20 any period of time before his or her death, the amount of the monthly
21 payment shall be paid to the surviving spouse or the child or children
22 if there is no surviving spouse. If there is no surviving spouse and
23 no child or children, the amount of the monthly payment shall be paid
24 by the department or self-insurer, as the case may be, and distributed
25 consistent with the terms of the decedent's will or, if the decedent
26 dies intestate, consistent with the terms of RCW 11.04.015.

27 (c) Any application for compensation under this subsection (2)
28 shall be filed with the department or self-insuring employer, as the
29 case may be, within one year of the date of death. The department or
30 self-insurer may satisfy its responsibilities under this subsection (2)
31 by sending any payment due in the name of the decedent and to the last
32 known address of the decedent.

33 (3)(a) Any worker or beneficiary receiving benefits under this
34 title who is subsequently confined in, or who subsequently becomes
35 eligible for benefits under this title while confined in, any
36 institution under conviction and sentence shall have all payments of
37 the compensation canceled during the period of confinement. After

1 discharge from the institution, payment of benefits due afterward shall
2 be paid if the worker or beneficiary would, except for the provisions
3 of this subsection (3), otherwise be entitled to them.

4 (b) If any prisoner is injured in the course of his or her
5 employment while participating in a work or training release program
6 authorized by chapter 72.65 RCW and is subject to the provisions of
7 this title, he or she is entitled to payments under this title, subject
8 to the requirements of chapter 72.65 RCW, unless his or her
9 participation in the program has been canceled, or unless he or she is
10 returned to a state correctional institution, as defined in RCW
11 72.65.010(3), as a result of revocation of parole or new sentence.

12 (c) If the confined worker has any beneficiaries during the
13 confinement period during which benefits are canceled under (a) or (b)
14 of this subsection, they shall be paid directly the monthly benefits
15 which would have been paid to the worker for himself or herself and the
16 worker's beneficiaries had the worker not been confined.

17 (4) Any lump sum benefits to which a worker would otherwise be
18 entitled but for the provisions of this section shall be paid on a
19 monthly basis to his or her beneficiaries.

20 **Sec. 27.** RCW 51.32.055 and 1997 c 416 s 1 are each amended to read
21 as follows:

22 (1) One purpose of this title is to restore the injured worker as
23 nearly as possible to the condition of self-support as an able-bodied
24 worker. Claims shall be closed and benefits for permanent disability
25 shall be determined (~~((under the director's supervision, except as~~
26 ~~otherwise authorized in subsection (9) of this section,))~~) only after
27 the injured worker's condition becomes fixed.

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

1 ~~insurer has made a request to the department, in the possession of or~~
2 ~~under the control of the self insurer shall be forwarded to the~~
3 ~~director with the request.~~

4 ~~(3) A request for determination of permanent disability shall be~~
5 ~~examined by the department or, if authorized in subsection (9) of this~~
6 ~~section, the self insurer, and the department shall issue an order in~~
7 ~~accordance with RCW 51.52.050 or, in the case of a self insured~~
8 ~~employer, the self insurer may: (a) Enter a written order,~~
9 ~~communicated to the worker and the department self insurance section in~~
10 ~~accordance with subsection (9) of this section, or (b) request the~~
11 ~~department to issue an order in accordance with RCW 51.52.050.~~

12 ~~(4) The department or, in cases authorized in subsection (9) of~~
13 ~~this section, the self insurer may require that the worker present~~
14 ~~himself or herself for a special medical examination by a physician or~~
15 ~~physicians selected by the department, and the department or, in cases~~
16 ~~authorized in subsection (9) of this section,)) The department or the~~
17 ~~self-insurer, as the case may be, may require that the worker present~~
18 ~~himself or herself for a special medical examination by a physician or~~
19 ~~physicians selected by the department or the self-insurer and~~
20 ~~require that the worker present himself or herself for a personal~~
21 ~~interview. The costs of the examination or interview, including~~
22 ~~payment of any reasonable travel expenses, shall be paid by the~~
23 ~~department or self-insurer, as the case may be.~~

24 ~~((+5)) (3) The director may establish a medical bureau within the~~
25 ~~department to perform medical examinations under this section.~~
26 ~~Physicians hired or retained for this purpose shall be grounded in~~
27 ~~industrial medicine and in the assessment of industrial physical~~
28 ~~impairment. ((Self insurers shall bear a proportionate share of the~~
29 ~~cost of the medical bureau in a manner to be determined by the~~
30 ~~department.~~

31 ~~(+6)) (4) Where a dispute arises from the handling of any state~~
32 ~~fund claim before the condition of the injured worker becomes fixed,~~
33 ~~the worker((7)) or employer((7, or self insurer)) may request the~~
34 ~~department to resolve the dispute or the director may initiate an~~
35 ~~inquiry on his or her own motion. In these cases, the department shall~~
36 ~~proceed as provided in this section and an order shall issue in~~
37 ~~accordance with RCW 51.52.050.~~

1 ~~((7)(a) If a claim (i) is accepted by a self-insurer after June~~
2 ~~30, 1986, and before August 1, 1997, (ii) involves only medical~~
3 ~~treatment and the payment of temporary disability compensation under~~
4 ~~RCW 51.32.090 or only the payment of temporary disability compensation~~
5 ~~under RCW 51.32.090, (iii) at the time medical treatment is concluded~~
6 ~~does not involve permanent disability, (iv) is one with respect to~~
7 ~~which the department has not intervened under subsection (6) of this~~
8 ~~section, and (v) the injured worker has returned to work with the self-~~
9 ~~insured employer of record, whether at the worker's previous job or at~~
10 ~~a job that has comparable wages and benefits, the claim may be closed~~
11 ~~by the self-insurer, subject to reporting of claims to the department~~
12 ~~in a manner prescribed by department rules adopted under chapter 34.05~~
13 ~~RCW.~~

14 ~~(b) All determinations of permanent disability for claims accepted~~
15 ~~under this subsection (7) by self-insurers shall be made by the self-~~
16 ~~insured section of the department under subsections (1) through (4) of~~
17 ~~this section.~~

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

30 ~~(8)(a) If a claim (i) is accepted by a self-insurer after June 30,~~
31 ~~1990, and before August 1, 1997, (ii) involves only medical treatment,~~
32 ~~(iii) does not involve payment of temporary disability compensation~~
33 ~~under RCW 51.32.090, and (iv) at the time medical treatment is~~
34 ~~concluded does not involve permanent disability, the claim may be~~
35 ~~closed by the self-insurer, subject to reporting of claims to the~~
36 ~~department in a manner prescribed by department rules adopted under~~
37 ~~chapter 34.05 RCW. Upon closure of a claim, the self-insurer shall~~
38 ~~enter a written order, communicated to the worker, which contains the~~

1 following statement clearly set forth in bold face type:—"This order
2 constitutes notification that your claim is being closed with medical
3 benefits only, as provided. If for any reason you disagree with this
4 closure, you must protest in writing to the Department of Labor and
5 Industries, Olympia, within 60 days of the date you received this
6 order. The department will then review your claim and enter a further
7 determinative order."

8 (b) All determinations of permanent disability for claims accepted
9 under this subsection (8) by self insurers shall be made by the self-
10 insured section of the department under subsections (1) through (4) of
11 this section.

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

28 (b) If a physician submits a report to the self insurer that
29 concludes that the worker's condition is fixed and stable and supports
30 payment of a permanent partial disability award, and if within fourteen
31 days from the date the self insurer mailed the report to the attending
32 or treating physician, the worker's attending or treating physician
33 disagrees in writing that the worker's condition is fixed and stable,
34 the self insurer must get a supplemental medical opinion from a
35 provider on the department's approved examiner's list before closing
36 the claim. In the alternative, the self insurer may forward the claim
37 to the department, which must review the claim and enter a final order
38 as provided for in RCW 51.52.050.

1 ~~(c) Upon closure of a claim under this subsection (9), the self-~~
2 ~~insurer shall enter a written order, communicated to the worker and the~~
3 ~~department self insurance section, which contains the following~~
4 ~~statement clearly set forth in bold face type: "This order constitutes~~
5 ~~notification that your claim is being closed with such medical benefits~~
6 ~~and temporary disability compensation as provided to date and with such~~
7 ~~award for permanent partial disability, if any, as set forth below, and~~
8 ~~with the condition that you have returned to work with the self insured~~
9 ~~employer. If for any reason you disagree with the conditions or~~
10 ~~duration of your return to work or the medical benefits, temporary~~
11 ~~disability compensation provided, or permanent partial disability that~~
12 ~~has been awarded, you must protest in writing to the Department of~~
13 ~~Labor and Industries, Self Insurance Section, within sixty days of the~~
14 ~~date you received this order. If you do not protest this order to the~~
15 ~~department, this order will become final."~~

16 ~~(d) All determinations of permanent partial disability for claims~~
17 ~~accepted by self insurers under this subsection (9) may be made by the~~
18 ~~self insurer or the self insurer may request a determination by the~~
19 ~~self insured section of the department. All determinations shall be~~
20 ~~made under subsections (1) through (4) of this section.~~

21 ~~(10) If the department receives a protest of an order issued by a~~
22 ~~self insurer under subsections (7) through (9) of this section, the~~
23 ~~self insurer's closure order must be held in abeyance. The department~~
24 ~~shall review the claim closure action and enter a further determinative~~
25 ~~order as provided for in RCW 51.52.050. If no protest is timely filed,~~
26 ~~the closing order issued by the self insurer shall become final and~~
27 ~~shall have the same force and effect as a department order that has~~
28 ~~become final under RCW 51.52.050.~~

29 ~~(11) If within two years of claim closure under subsections (7)~~
30 ~~through (9) of this section, the department determines that the self-~~
31 ~~insurer has made payment of benefits because of clerical error, mistake~~
32 ~~of identity, or innocent misrepresentation or the department discovers~~
33 ~~a violation of the conditions of claim closure, the department may~~
34 ~~require the self insurer to correct the benefits paid or payable. This~~
35 ~~subsection (11) does not limit in any way the application of RCW~~
36 ~~51.32.240.~~

37 ~~(12) For the purposes of this section, "comparable wages and~~

1 ~~benefits" means wages and benefits that are at least ninety five~~
2 ~~percent of the wages and benefits received by the worker at the time of~~
3 ~~injury.))~~

4 **Sec. 28.** RCW 51.32.060 and 1993 c 521 s 2 are each amended to read
5 as follows:

6 (1) When the (~~supervisor of industrial insurance shall~~)
7 department or the self-insurer, as the case may be, determines that
8 permanent total disability results from the injury, the worker shall
9 receive monthly during the period of such disability:

10 (a) If married at the time of injury, sixty-five percent of his or
11 her wages but not less than two hundred fifteen dollars per month.

12 (b) If married with one child at the time of injury, sixty-seven
13 percent of his or her wages but not less than two hundred fifty-two
14 dollars per month.

15 (c) If married with two children at the time of injury, sixty-nine
16 percent of his or her wages but not less than two hundred eighty-three
17 dollars.

18 (d) If married with three children at the time of injury,
19 seventy-one percent of his or her wages but not less than three hundred
20 six dollars per month.

21 (e) If married with four children at the time of injury,
22 seventy-three percent of his or her wages but not less than three
23 hundred twenty-nine dollars per month.

24 (f) If married with five or more children at the time of injury,
25 seventy-five percent of his or her wages but not less than three
26 hundred fifty-two dollars per month.

27 (g) If unmarried at the time of the injury, sixty percent of his or
28 her wages but not less than one hundred eighty-five dollars per month.

29 (h) If unmarried with one child at the time of injury, sixty-two
30 percent of his or her wages but not less than two hundred twenty-two
31 dollars per month.

32 (i) If unmarried with two children at the time of injury,
33 sixty-four percent of his or her wages but not less than two hundred
34 fifty-three dollars per month.

35 (j) If unmarried with three children at the time of injury,
36 sixty-six percent of his or her wages but not less than two hundred
37 seventy-six dollars per month.

1 (k) If unmarried with four children at the time of injury,
2 sixty-eight percent of his or her wages but not less than two hundred
3 ninety-nine dollars per month.

4 (1) If unmarried with five or more children at the time of injury,
5 seventy percent of his or her wages but not less than three hundred
6 twenty-two dollars per month.

7 (2) For any period of time where both husband and wife are entitled
8 to compensation as temporarily or totally disabled workers, only that
9 spouse having the higher wages of the two shall be entitled to claim
10 their child or children for compensation purposes.

11 (3) In case of permanent total disability, if the character of the
12 injury is such as to render the worker so physically helpless as to
13 require the hiring of the services of an attendant, the department
14 shall make monthly payments to such attendant for such services as long
15 as such requirement continues, but such payments shall not obtain or be
16 operative while the worker is receiving care under or pursuant to the
17 provisions of chapter 51.36 RCW and RCW 51.04.105.

18 (4) Should any further accident result in the permanent total
19 disability of an injured worker, he or she shall receive the pension to
20 which he or she would be entitled, notwithstanding the payment of a
21 lump sum for his or her prior injury.

22 (5) In no event shall the monthly payments provided in this section
23 exceed the applicable percentage of the average monthly wage in the
24 state as computed under the provisions of RCW 51.08.018 as follows:

	AFTER	PERCENTAGE
25		
26	June 30, 1993	105%
27	June 30, 1994	110%
28	June 30, 1995	115%
29	June 30, 1996	120%

30 The limitations under this subsection shall not apply to the
31 payments provided for in subsection (3) of this section.

32 (6) In the case of new or reopened claims, if the (~~supervisor of~~
33 ~~industrial insurance~~) department or the self-insurer, as the case may
34 be, determines that, at the time of filing or reopening, the worker is
35 voluntarily retired and is no longer attached to the work force,
36 benefits shall not be paid under this section.

1 (7) The benefits provided by this section are subject to
2 modification under RCW 51.32.067.

3 **Sec. 29.** RCW 51.32.080 and 1993 c 520 s 1 are each amended to read
4 as follows:

5 (1)(a) Until July 1, 1993, for the permanent partial disabilities
6 here specifically described, the injured worker shall receive
7 compensation as follows:

8 LOSS BY AMPUTATION

9	Of leg above the knee joint with short	
10	thigh stump (3" or less below the	
11	tuberosity of ischium)	\$54,000.00
12	Of leg at or above knee joint with	
13	functional stump	48,600.00
14	Of leg below knee joint	43,200.00
15	Of leg at ankle (Syme)	37,800.00
16	Of foot at mid-metatarsals	18,900.00
17	Of great toe with resection of metatarsal	
18	bone	11,340.00
19	Of great toe at metatarsophalangeal	
20	joint	6,804.00
21	Of great toe at interphalangeal joint	3,600.00
22	Of lesser toe (2nd to 5th) with resection of	
23	metatarsal bone	4,140.00
24	Of lesser toe at metatarsophalangeal	
25	joint	2,016.00
26	Of lesser toe at proximal interphalangeal	
27	joint	1,494.00
28	Of lesser toe at distal interphalangeal	
29	joint	378.00
30	Of arm at or above the deltoid insertion or	
31	by disarticulation at the shoulder	54,000.00
32	Of arm at any point from below the deltoid	
33	insertion to below the elbow joint at	
34	the insertion of the biceps tendon	51,300.00

1	Of arm at any point from below the elbow	
2	joint distal to the insertion of the	
3	biceps tendon to and including	
4	mid-metacarpal amputation of the	
5	hand	48,600.00
6	Of all fingers except the thumb at	
7	metacarpophalangeal joints	29,160.00
8	Of thumb at metacarpophalangeal joint or	
9	with resection of carpometacarpal	
10	bone	19,440.00
11	Of thumb at interphalangeal joint	9,720.00
12	Of index finger at metacarpophalangeal	
13	joint or with resection of metacarpal	
14	bone	12,150.00
15	Of index finger at proximal	
16	interphalangeal joint	9,720.00
17	Of index finger at distal interphalangeal	
18	joint	5,346.00
19	Of middle finger at metacarpophalangeal	
20	joint or with resection of metacarpal	
21	bone	9,720.00
22	Of middle finger at proximal	
23	interphalangeal joint	7,776.00
24	Of middle finger at distal interphalangeal	
25	joint	4,374.00
26	Of ring finger at metacarpophalangeal	
27	joint or with resection of metacarpal	
28	bone	4,860.00
29	Of ring finger at proximal interphalangeal	
30	joint	3,888.00
31	Of ring finger at distal interphalangeal	
32	joint	2,430.00
33	Of little finger at metacarpophalangeal	
34	joint or with resection of metacarpal	
35	bone	2,430.00
36	Of little finger at proximal interphalangeal	
37	joint	1,944.00

1	Of little finger at distal interphalangeal	
2	joint.....	972.00
3	MISCELLANEOUS	
4	Loss of one eye by enucleation	21,600.00
5	Loss of central visual acuity in one eye ...	18,000.00
6	Complete loss of hearing in both ears	43,200.00
7	Complete loss of hearing in one ear	7,200.00

8 (b) Beginning on July 1, 1993, compensation under this subsection
9 shall be computed as follows:

10 (i) Beginning on July 1, 1993, the compensation amounts for the
11 specified disabilities listed in (a) of this subsection shall be
12 increased by thirty-two percent; and

13 (ii) Beginning on July 1, 1994, and each July 1 thereafter, the
14 compensation amounts for the specified disabilities listed in (a) of
15 this subsection, as adjusted under (b)(i) of this subsection, shall be
16 readjusted to reflect the percentage change in the consumer price
17 index, calculated as follows: The index for the calendar year
18 preceding the year in which the July calculation is made, to be known
19 as "calendar year A," is divided by the index for the calendar year
20 preceding calendar year A, and the resulting ratio is multiplied by the
21 compensation amount in effect on June 30 immediately preceding the July
22 1st on which the respective calculation is made. For the purposes of
23 this subsection, "index" means the same as the definition in RCW
24 2.12.037(1).

25 (2) Compensation for amputation of a member or part thereof at a
26 site other than those specified in subsection (1) of this section, and
27 for loss of central visual acuity and loss of hearing other than
28 complete, shall be in proportion to that which such other amputation or
29 partial loss of visual acuity or hearing most closely resembles and
30 approximates. Compensation shall be calculated based on the adjusted
31 schedule of compensation in effect for the respective time period as
32 prescribed in subsection (1) of this section.

33 (3)(a) Compensation for any other permanent partial disability not
34 involving amputation shall be in the proportion which the extent of
35 such other disability, called unspecified disability, shall bear to the
36 disabilities specified in subsection (1) of this section, which most
37 closely resembles and approximates in degree of disability such other

1 disability, and compensation for any other unspecified permanent
2 partial disability shall be in an amount as measured and compared to
3 total bodily impairment. To reduce litigation and establish more
4 certainty and uniformity in the rating of unspecified permanent partial
5 disabilities, the department shall enact rules having the force of law
6 classifying such disabilities in the proportion which the department
7 shall determine such disabilities reasonably bear to total bodily
8 impairment. In enacting such rules, the department shall give
9 consideration to, but need not necessarily adopt, any nationally
10 recognized medical standards or guides for determining various bodily
11 impairments.

12 (b) Until July 1, 1993, for purposes of calculating monetary
13 benefits under (a) of this subsection, the amount payable for total
14 bodily impairment shall be deemed to be ninety thousand dollars.
15 Beginning on July 1, 1993, for purposes of calculating monetary
16 benefits under (a) of this subsection, the amount payable for total
17 bodily impairment shall be adjusted as follows:

18 (i) Beginning on July 1, 1993, the amount payable for total bodily
19 impairment under this section shall be increased to one hundred
20 eighteen thousand eight hundred dollars; and

21 (ii) Beginning on July 1, 1994, and each July 1 thereafter, the
22 amount payable for total bodily impairment prescribed in (b)(i) of this
23 subsection shall be adjusted as provided in subsection (1)(b)(ii) of
24 this section.

25 (c) Until July 1, 1993, the total compensation for all unspecified
26 permanent partial disabilities resulting from the same injury shall not
27 exceed the sum of ninety thousand dollars. Beginning on July 1, 1993,
28 total compensation for all unspecified permanent partial disabilities
29 resulting from the same injury shall not exceed a sum calculated as
30 follows:

31 (i) Beginning on July 1, 1993, the sum shall be increased to one
32 hundred eighteen thousand eight hundred dollars; and

33 (ii) Beginning on July 1, 1994, and each July 1 thereafter, the sum
34 prescribed in (b)(i) of this subsection shall be adjusted as provided
35 in subsection (1)(b)(ii) of this section.

36 (4) If permanent partial disability compensation is followed by
37 permanent total disability compensation, any portion of the permanent
38 partial disability compensation which exceeds the amount that would

1 have been paid the injured worker if permanent total disability
2 compensation had been paid in the first instance, shall be deducted
3 from the pension reserve of such injured worker and his or her monthly
4 compensation payments shall be reduced accordingly.

5 (5) Should a worker receive an injury to a member or part of his or
6 her body already, from whatever cause, permanently partially disabled,
7 resulting in the amputation thereof or in an aggravation or increase in
8 such permanent partial disability but not resulting in the permanent
9 total disability of such worker, his or her compensation for such
10 partial disability shall be adjudged with regard to the previous
11 disability of the injured member or part and the degree or extent of
12 the aggravation or increase of disability thereof.

13 (6) When the compensation provided for in subsections (1) through
14 (3) of this section exceeds three times the average monthly wage in the
15 state as computed under the provisions of RCW 51.08.018, payment shall
16 be made in monthly payments in accordance with the schedule of
17 temporary total disability payments set forth in RCW 51.32.090 until
18 such compensation is paid to the injured worker in full, except that
19 the first monthly payment shall be in an amount equal to three times
20 the average monthly wage in the state as computed under the provisions
21 of RCW 51.08.018, and interest shall be paid at the rate of eight
22 percent on the unpaid balance of such compensation commencing with the
23 second monthly payment. However, upon application of the injured
24 worker or survivor the monthly payment may be converted, in whole or in
25 part, into a lump sum payment, in which event the monthly payment shall
26 cease in whole or in part. Such conversion may be made only upon
27 written application of the injured worker or survivor to the department
28 or self-insurer, as the case may be, and shall rest in the discretion
29 of the department or self-insurer, as the case may be, depending upon
30 the merits of each individual application. Upon the death of a worker
31 all unpaid installments accrued shall be paid according to the payment
32 schedule established prior to the death of the worker to the widow or
33 widower, or if there is no widow or widower surviving, to the dependent
34 children of such claimant, and if there are no such dependent children,
35 then to such other dependents as defined by this title.

36 (7) Awards payable under this section are governed by the schedule
37 in effect on the date of injury.

1 **Sec. 30.** RCW 51.32.095 and 1999 c 110 s 1 are each amended to read
2 as follows:

3 (1) One of the primary purposes of this title is to enable the
4 injured worker to become employable at gainful employment. To this
5 end, the department or self-insurers, as the case may be, shall utilize
6 the services of individuals and organizations, public or private, whose
7 experience, training, and interests in vocational rehabilitation and
8 retraining qualify them to lend expert assistance (~~((to the supervisor
9 of industrial insurance))~~) in such programs of vocational rehabilitation
10 as may be reasonable to make the worker employable consistent with his
11 or her physical and mental status. (~~((Where, after evaluation and
12 recommendation by such individuals or organizations and prior to final
13 evaluation of the worker's permanent disability and in the sole opinion
14 of the supervisor or supervisor's designee, whether or not medical
15 treatment has been concluded, vocational rehabilitation is both
16 necessary and likely to enable the injured worker to become employable
17 at gainful employment, the supervisor or supervisor's designee may, in
18 his or her sole discretion, pay or, if the employer is a self insurer,
19 direct the self insurer to pay the cost as provided in subsection (3)
20 of this section.))~~) The department or self-insurer, as the case may be,
21 may pay the costs as provided in subsection (3) of this section if
22 vocational rehabilitation is both necessary and likely to enable the
23 injured worker to become employable at gainful employment. Such costs
24 may be approved before final evaluation of the worker's permanent
25 disability, whether or not medical treatment has been concluded.

26 (2) When in the (~~(sole))~~) discretion of the (~~((supervisor or the
27 supervisor's designee))~~) department or self-insurer, as the case may be,
28 vocational rehabilitation is both necessary and likely to make the
29 worker employable at gainful employment, then the following order of
30 priorities shall be used:

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

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

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

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

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

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

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

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

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

7 (3)(a) Except as provided in (b) of this subsection, costs for
8 vocational rehabilitation benefits allowed (~~((by the supervisor or
9 supervisor's designee))~~) under subsection (1) of this section may
10 include the cost of books, tuition, fees, supplies, equipment,
11 transportation, child or dependent care, and other necessary expenses
12 for any such worker in an amount not to exceed three thousand dollars
13 in any fifty-two week period (~~((except as authorized by RCW 51.60.060))~~),
14 and the cost of continuing the temporary total disability compensation
15 under RCW 51.32.090 while the worker is actively and successfully
16 undergoing a formal program of vocational rehabilitation.

17 (b) Beginning with vocational rehabilitation plans approved on or
18 after July 1, 1999, costs for vocational rehabilitation benefits
19 allowed (~~((by the supervisor or supervisor's designee))~~) under subsection
20 (1) of this section may include the cost of books, tuition, fees,
21 supplies, equipment, child or dependent care, and other necessary
22 expenses for any such worker in an amount not to exceed four thousand
23 dollars in any fifty-two week period (~~((except as authorized by RCW
24 51.60.060))~~), and the cost of transportation and continuing the
25 temporary total disability compensation under RCW 51.32.090 while the
26 worker is actively and successfully undergoing a formal program of
27 vocational rehabilitation.

28 (c) The expenses allowed under (a) or (b) of this subsection may
29 include training fees for on-the-job training and the cost of
30 furnishing tools and other equipment necessary for self-employment or
31 reemployment. However, compensation or payment of retraining with job
32 placement expenses under (a) or (b) of this subsection may not be
33 authorized for a period of more than fifty-two weeks, except that such
34 period may, in the sole discretion of the (~~((supervisor after his or her
35 review))~~) department or self-insurer, as the case may be, be extended
36 for an additional fifty-two weeks or portion thereof by written order
37 of the (~~((supervisor))~~) department or self-insurer, as the case may be.

1 (d) In cases where the worker is required to reside away from his
2 or her customary residence, the reasonable cost of board and lodging
3 shall also be paid.

4 (e) Costs paid under this subsection shall be chargeable to the
5 employer's cost experience or shall be paid by the self-insurer as the
6 case may be.

7 (4) In addition to the vocational rehabilitation expenditures
8 provided for under subsection (3) of this section, an additional five
9 thousand dollars may, upon authorization of the (~~supervisor or the~~
10 ~~supervisor's designee~~) department or self-insurer, as the case may be,
11 be expended for: (a) Accommodations for an injured worker that are
12 medically necessary for the worker to participate in an approved
13 retraining plan; and (b) accommodations necessary to perform the
14 essential functions of an occupation in which an injured worker is
15 seeking employment, consistent with the retraining plan or the
16 recommendations of a vocational evaluation. The injured worker's
17 attending physician must verify the necessity of the modifications or
18 accommodations. The total expenditures authorized in this subsection
19 and the expenditures authorized under RCW 51.32.250 shall not exceed
20 five thousand dollars.

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

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

29 (~~The benefits in this section shall be provided for the~~
30 ~~injured workers of self-insured employers.~~) Self-insurers shall
31 (~~report both benefits provided and benefits denied under this section~~
32 ~~in the manner prescribed by the department by rule adopted under~~
33 ~~chapter 34.05 RCW~~) issue a written determination providing or denying
34 benefits under this section. The determination shall state, in bold-
35 faced type of at least ten-point font, that such determination becomes
36 final within fifteen days from the date the determination is
37 communicated to the parties unless a written protest is filed with the
38 director of the department of labor and industries in Olympia. The

1 self-insurer's determination may not be appealed to the board of
2 industrial insurance appeals. If a worker timely protests a
3 determination issued by a self-insured employer under this section, the
4 director may(~~(, in his or her sole discretion and upon his or her own~~
5 initiative or at any time that a dispute arises under this section,))
6 promptly make such inquiries as circumstances require ((and)), take
7 such other action as he or she considers will properly determine the
8 matter and protect the rights of the parties, and determine whether, in
9 the director's sole discretion, vocational rehabilitation is both
10 necessary and likely to make the worker employable at gainful
11 employment.

12 (8) Except as otherwise provided in this section, the benefits
13 provided for in this section are available to any otherwise eligible
14 worker regardless of the date of industrial injury. However, claims
15 shall not be reopened solely for vocational rehabilitation purposes.

16 **Sec. 31.** RCW 51.32.110 and 1997 c 325 s 3 are each amended to read
17 as follows:

18 (1) Any worker entitled to receive any benefits or claiming such
19 under this title shall, if requested by the department or self-insurer,
20 submit himself or herself for medical examination, at a time and from
21 time to time, at a place reasonably convenient for the worker and as
22 may be provided by the rules of the department. An injured worker,
23 whether an alien or other injured worker, who is not residing in the
24 United States at the time that a medical examination is requested may
25 be required to submit to an examination at any location in the United
26 States determined by the department or self-insurer.

27 (2) If the worker refuses to submit to medical examination, or
28 obstructs the same, or, if any injured worker shall persist in
29 unsanitary or injurious practices which tend to imperil or retard his
30 or her recovery, or shall refuse to submit to such medical or surgical
31 treatment as is reasonably essential to his or her recovery or refuse
32 or obstruct evaluation or examination for the purpose of vocational
33 rehabilitation or does not cooperate in reasonable efforts at such
34 rehabilitation, the department or the self-insurer ((~~upon approval by~~
35 the department)), as the case may be, with notice to the worker may
36 suspend any further action on any claim of such worker so long as such
37 refusal, obstruction, noncooperation, or practice continues and reduce,

1 suspend, or deny any compensation for such period(~~(: PROVIDED, That)~~).
2 However, the department or the self-insurer shall not suspend any
3 further action on any claim of a worker or reduce, suspend, or deny any
4 compensation if a worker has good cause for refusing to submit to or to
5 obstruct any examination, evaluation, treatment, or practice requested
6 by the department or self-insurer or required under this section.

7 (3) If the worker necessarily incurs traveling expenses in
8 attending the examination pursuant to the request of the department or
9 the self-insurer, such traveling expenses shall be repaid to him or her
10 out of the accident fund upon proper voucher and audit or shall be
11 repaid by the self-insurer, as the case may be.

12 (4)(a) If the medical examination required by this section causes
13 the worker to be absent from his or her work without pay:

14 (i) In the case of a worker insured by the department, the worker
15 shall be paid compensation out of the accident fund in an amount equal
16 to his or her usual wages for the time lost from work while attending
17 the medical examination; or

18 (ii) In the case of a worker of a self-insurer, the self-insurer
19 shall pay the worker an amount equal to his or her usual wages for the
20 time lost from work while attending the medical examination.

21 (b) This subsection (4) shall apply prospectively to all claims
22 regardless of the date of injury.

23 **Sec. 32.** RCW 51.32.160 and 1995 c 253 s 2 are each amended to read
24 as follows:

25 (1)(a) If aggravation, diminution, or termination of disability
26 takes place, the (~~director~~) department or self-insurer, as the case
27 may be, may, upon the application of the beneficiary to the department
28 or self-insurer, as the case may be, made within seven years from the
29 date the first closing order becomes final, or at any time upon (~~his~~
30 ~~or her own~~) the director's or self-insurer's motion, as the case may
31 be, readjust the rate of compensation in accordance with the rules in
32 this section provided for the same, or in a proper case terminate the
33 payment(~~(: PROVIDED, That)~~). However, the (~~director~~) department or
34 self-insurer, as the case may be, may, upon application of the worker
35 made at any time, provide proper and necessary medical and surgical
36 services as authorized under RCW 51.36.010. The department shall

1 promptly mail a copy of the application to the state fund employer at
2 the employer's last known address as shown by the records of the
3 department.

4 (b) "Closing order" as used in this section means an order based on
5 factors which include medical recommendation, advice, or examination.

6 (c) Applications for benefits where the claim has been closed
7 without medical recommendation, advice, or examination are not subject
8 to the seven year limitation of this section. The preceding sentence
9 shall not apply to any closing order issued prior to July 1, 1981.
10 First closing orders issued between July 1, 1981, and July 1, 1985,
11 shall, for the purposes of this section only, be deemed issued on July
12 1, 1985. The time limitation of this section shall be ten years in
13 claims involving loss of vision or function of the eyes.

14 (d) If an order denying an application to reopen filed on or after
15 July 1, 1988, is not issued within ninety days of receipt of such
16 application by the self-insured employer or the department, as the case
17 may be, such application shall be deemed granted. However, for good
18 cause, the department or self-insurer, as the case may be, may extend
19 the time for making the final determination on the application for an
20 additional sixty days.

21 (2) If a worker receiving a pension for total disability returns to
22 gainful employment for wages, the director may suspend or terminate the
23 rate of compensation established for the disability without producing
24 medical evidence that shows that a diminution of the disability has
25 occurred.

26 (3) No act done or ordered to be done by (~~the director, or~~) the
27 department (~~prior to~~) or the self-insurer before the (~~signing and~~
28 ~~filing in the matter~~) issuing of a written order for such readjustment
29 shall be grounds for such readjustment.

30 **Sec. 33.** RCW 51.32.195 and 1987 c 290 s 1 are each amended to read
31 as follows:

32 On any industrial injury claim where (~~the~~) a self-insured
33 (~~employer or injured worker has requested a determination by the~~
34 ~~department~~) employer's order has been protested, the self-insurer must
35 submit (~~all medical reports and any other specified information not~~
36 ~~previously submitted~~) the claim file to the department. When the
37 department requests information from a self-insurer by certified mail,

1 the self-insurer shall submit all information in its possession
2 concerning a claim within ten working days from the date of receipt of
3 such certified notice.

4 **Sec. 34.** RCW 51.32.210 and 1977 ex.s. c 350 s 55 are each amended
5 to read as follows:

6 Claims of injured workers (~~(of employers who have secured the~~
7 ~~payment of compensation by insuring with the department))~~ shall be
8 promptly acted upon by the department or self-insurer, as the case may
9 be. Where temporary disability compensation is payable, the first
10 payment thereof shall be mailed within fourteen days after receipt of
11 the claim at the department (~~(its offices in Olympia))~~ or self-insurer,
12 as the case may be, and shall continue at regular semimonthly or
13 biweekly intervals. The payment of this or any other benefits under
14 this title, prior to the entry of an order (~~(by the department))~~ in
15 accordance with RCW 51.52.050 (~~(as now or hereafter amended)~~), shall be
16 not considered a binding determination of the obligations of the
17 department or self-insurer, as the case may be, under this title. The
18 acceptance of compensation by the worker or his or her beneficiaries
19 prior to such order shall likewise not be considered a binding
20 determination of their rights under this title.

21 **Sec. 35.** RCW 51.32.220 and 1982 c 63 s 19 are each amended to read
22 as follows:

23 (1) For persons under the age of sixty-five receiving compensation
24 for temporary or permanent total disability pursuant to the provisions
25 of chapter 51.32 RCW, such compensation shall be reduced by an amount
26 equal to the benefits payable under the federal old-age, survivors and
27 disability insurance act as now or hereafter amended not to exceed the
28 amount of the reduction established pursuant to 42 USC 424a. However,
29 such reduction shall not apply when the combined compensation provided
30 pursuant to chapter 51.32 RCW and the federal old-age, survivors and
31 disability insurance act is less than the total benefits to which the
32 federal reduction would apply, pursuant to 42 USC 424a. Where any
33 person described in this section refuses to authorize the release of
34 information concerning the amount of benefits payable under said
35 federal act the department (~~(its))~~ or self-insurer's estimate, as the

1 case may be, of said amount shall be deemed to be correct unless and
2 until the actual amount is established and no adjustment shall be made
3 for any period of time covered by any such refusal.

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

18 (3) Recovery of any overpayment must be taken from future temporary
19 or permanent total disability benefits or permanent partial disability
20 benefits provided by this title. In the case of temporary or permanent
21 total disability benefits, the recovery shall not exceed twenty-five
22 percent of the monthly amount due from the department or self-insurer,
23 as the case may be, or one-sixth of the total overpayment, whichever is
24 the lesser.

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

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

30 (6) The (~~(director)~~) department or self-insurer, as the case may
31 be, pursuant to rules adopted in accordance with the procedures
32 provided in the administrative procedure act, chapter 34.05 RCW, may
33 exercise (~~(his)~~) discretion to waive, in whole or in part, the amount
34 of any overpayment where the recovery would be against equity and good
35 conscience.

36 (7) The amendment in subsection (1) of this section by chapter 63,
37 Laws of 1982 raising the age limit during which the reduction shall be

1 made from age sixty-two to age sixty-five shall apply with respect to
2 workers whose effective entitlement to total disability compensation
3 begins after January 1, 1983.

4 **Sec. 36.** RCW 51.32.225 and 1986 c 59 s 5 are each amended to read
5 as follows:

6 (1) For persons receiving compensation for temporary or permanent
7 total disability under this title, the compensation shall be reduced by
8 the department or self-insurer, as the case may be, to allow an offset
9 for social security retirement benefits payable under the federal
10 social security, old age survivors, and disability insurance act, 42
11 U.S.C. This reduction shall not apply to any worker who is receiving
12 permanent total disability benefits prior to July 1, 1986.

13 (2) Reductions for social security retirement benefits under this
14 section shall comply with the procedures in RCW 51.32.220 (1) through
15 (6), except those that relate to computation, and with any other
16 procedures established by the department to administer this section.

17 (3) Any reduction in compensation made under chapter 58, Laws of
18 1986, shall be made before the reduction established in this section.

19 **Sec. 37.** RCW 51.32.230 and 1979 ex.s. c 151 s 2 are each amended
20 to read as follows:

21 Notwithstanding any other provisions of law, any overpayments
22 previously recovered under the provisions of RCW 51.32.220 (~~(as now or~~
23 ~~hereafter amended)~~) shall be limited to six months' overpayments.
24 Where greater recovery has already been made, the director(~~(, in his)~~)
25 or the self-insurer, as the case may be, has the discretion(~~(, may)~~) to
26 make restitution in those cases where an extraordinary hardship has
27 been created.

28 **Sec. 38.** RCW 51.32.240 and 2001 c 146 s 10 are each amended to
29 read as follows:

30 (1) Whenever any payment of benefits under this title is made
31 because of clerical error, mistake of identity, innocent
32 misrepresentation by or on behalf of the recipient thereof mistakenly
33 acted upon, or any other circumstance of a similar nature, all not
34 induced by fraud, the recipient thereof shall repay it and recoupment
35 may be made from any future payments due to the recipient on any claim

1 with the state fund or self-insurer, as the case may be. The
2 department or self-insurer, as the case may be, must make claim for
3 such repayment or recoupment within one year of the making of any such
4 payment or it will be deemed any claim therefor has been waived. The
5 (~~director~~) department or self-insurer, as the case may be, pursuant
6 to rules adopted in accordance with the procedures provided in the
7 administrative procedure act, chapter 34.05 RCW, may exercise (~~his~~)
8 discretion to waive, in whole or in part, the amount of any such timely
9 claim where the recovery would be against equity and good conscience.

10 (2) Whenever the department or self-insurer, as the case may be,
11 fails to pay benefits because of clerical error, mistake of identity,
12 or innocent misrepresentation, all not induced by recipient fraud, the
13 recipient may request an adjustment of benefits to be paid from the
14 state fund or by the self-insurer, as the case may be, subject to the
15 following:

16 (a) The recipient must request an adjustment in benefits within one
17 year from the date of the incorrect payment, whether the payment was
18 made by order or otherwise, or it will be deemed any claim therefore
19 has been waived.

20 (b) The recipient may not seek an adjustment of benefits because of
21 adjudicator error whether the payment was made by order or otherwise.
22 "Adjudicator error" includes the failure to consider information in the
23 claim file, failure to secure adequate information, or an error in
24 judgment.

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

1 (4) Whenever any payment of benefits under this title has been made
2 pursuant to an adjudication by the department or self-insurer or by
3 order of the board or any court and timely appeal therefrom has been
4 made where the final decision is that any such payment was made
5 pursuant to an erroneous adjudication, the recipient thereof shall
6 repay it and recoupment may be made from any future payments due to the
7 recipient on any claim with the state fund or self-insurer, as the case
8 may be. The ((director)) department or self-insurer, as the case may
9 be, pursuant to rules adopted in accordance with the procedures
10 provided in the administrative procedure act, chapter 34.05 RCW, may
11 exercise ((his)) discretion to waive, in whole or in part, the amount
12 of any such payments where the recovery would be against equity and
13 good conscience.

14 (5) Whenever any payment of benefits under this title has been
15 induced by fraud the recipient thereof shall repay any such payment
16 together with a penalty of fifty percent of the total of any such
17 payments and the amount of such total sum may be recouped from any
18 future payments due to the recipient on any claim with the state fund
19 or self-insurer against whom the fraud was committed, as the case may
20 be, and the amount of such penalty shall be placed in the supplemental
21 pension fund. Such repayment or recoupment must be demanded or ordered
22 within three years of the discovery of the fraud.

23 (6) The worker, beneficiary, or other person affected thereby shall
24 have the right to contest an order assessing an overpayment pursuant to
25 this section in the same manner and to the same extent as provided
26 under RCW 51.52.050 and 51.52.060. In the event such an order becomes
27 final under chapter 51.52 RCW and notwithstanding the provisions of
28 subsections (1) through (5) of this section, the ((~~director, director's~~
29 ~~designee,~~) department or self-insurer, as the case may be, may file
30 with the clerk in any county within the state a warrant in the amount
31 of the sum representing the unpaid overpayment and/or penalty plus
32 interest accruing from the date the order became final. The clerk of
33 the county in which the warrant is filed shall immediately designate a
34 superior court cause number for such warrant and the clerk shall cause
35 to be entered in the judgment docket under the superior court cause
36 number assigned to the warrant, the name of the worker, beneficiary, or
37 other person mentioned in the warrant, the amount of the unpaid
38 overpayment and/or penalty plus interest accrued, and the date the

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

16 The ((~~director, director's designee,~~)) department or self-insurer,
17 as the case may be, may issue to any person, firm, corporation,
18 municipal corporation, political subdivision of the state, public
19 corporation, or agency of the state, a notice to withhold and deliver
20 property of any kind if there is reason to believe that there is in the
21 possession of such person, firm, corporation, municipal corporation,
22 political subdivision of the state, public corporation, or agency of
23 the state, property that is due, owing, or belonging to any worker,
24 beneficiary, or other person upon whom a warrant has been served for
25 payments due the department or self-insurer. The notice and order to
26 withhold and deliver shall be served by certified mail accompanied by
27 an affidavit of service by mailing or served by the sheriff of the
28 county, or by the sheriff's deputy, or by any authorized representative
29 of the ((~~director, director's designee,~~)) department or self-insurer.
30 Any person, firm, corporation, municipal corporation, political
31 subdivision of the state, public corporation, or agency of the state
32 upon whom service has been made shall answer the notice within twenty
33 days exclusive of the day of service, under oath and in writing, and
34 shall make true answers to the matters inquired or in the notice and
35 order to withhold and deliver. In the event there is in the possession
36 of the party named and served with such notice and order, any property
37 that may be subject to the claim of the department or self-insurer,
38 such property shall be delivered forthwith to the ((~~director, the~~

1 ~~director's authorized representative,~~) department or self-insurer upon
2 demand. If the party served and named in the notice and order fails to
3 answer the notice and order within the time prescribed in this section,
4 the court may, after the time to answer such order has expired, render
5 judgment by default against the party named in the notice for the full
6 amount, plus costs, claimed by the (~~director, director's designee,~~)
7 department or self-insurer in the notice. In the event that a notice
8 to withhold and deliver is served upon an employer and the property
9 found to be subject thereto is wages, the employer may assert in the
10 answer all exemptions provided for by chapter 6.27 RCW to which the
11 wage earner may be entitled.

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

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

19 **Sec. 39.** RCW 51.32.250 and 1988 c 161 s 10 are each amended to
20 read as follows:

21 Modification of the injured worker's previous job or modification
22 of a new job is recognized as a desirable method of returning the
23 injured worker to gainful employment. In order to assist employers in
24 meeting the costs of job modification, and to encourage employers to
25 modify jobs to accommodate retaining or hiring workers with
26 disabilities resulting from work-related injury, the (~~supervisor or~~
27 ~~the supervisor's designee~~) department, in (~~his or her~~) its
28 discretion, may pay job modification costs in an amount not to exceed
29 five thousand dollars per worker per job modification. This payment is
30 intended to be a cooperative participation with the employer and funds
31 shall be taken from the appropriate account within the second injury
32 fund.

33 The benefits provided for in this section are available to any
34 otherwise eligible worker regardless of the date of industrial injury.

35 **Sec. 40.** RCW 51.36.010 and 1986 c 58 s 6 are each amended to read
36 as follows:

1 Upon the occurrence of any injury to a worker entitled to
2 compensation under the provisions of this title, he or she shall
3 receive proper and necessary medical and surgical services at the hands
4 of a physician of his or her own choice, if conveniently located, and
5 proper and necessary hospital care and services during the period of
6 his or her disability from such injury, but the same shall be limited
7 in point of duration as follows:

8 In the case of permanent partial disability, not to extend beyond
9 the date when compensation shall be awarded him or her, except when the
10 worker returned to work before permanent partial disability award is
11 made, in such case not to extend beyond the time when monthly
12 allowances to him or her shall cease; in case of temporary disability
13 not to extend beyond the time when monthly allowances to him or her
14 shall cease(~~(: PROVIDED, That)~~). However, after any injured worker
15 has returned to his or her work his or her medical and surgical
16 treatment may be continued if, and so long as, such continuation is
17 deemed necessary by the (~~(supervisor of industrial insurance)~~)
18 department or self-insurer, as the case may be, to be necessary to his
19 or her more complete recovery; in case of a permanent total disability
20 not to extend beyond the date on which a lump sum settlement is made
21 with him or her or he or she is placed upon the permanent pension
22 roll(~~(: PROVIDED, HOWEVER, That)~~). The (~~(supervisor of industrial~~
23 ~~insurance)~~) department, solely in (~~(his or her)~~) its discretion, may
24 authorize continued medical and surgical treatment for conditions
25 previously accepted (~~(by the department)~~) when such medical and
26 surgical treatment is deemed necessary by the (~~(supervisor of~~
27 ~~industrial insurance)~~) department to protect such worker's life or
28 provide for the administration of medical and therapeutic measures
29 including payment of prescription medications, but not including those
30 controlled substances currently scheduled by the state board of
31 pharmacy as Schedule I, II, III, or IV substances under chapter 69.50
32 RCW, which are necessary to alleviate continuing pain which results
33 from the industrial injury. In order to authorize such continued
34 treatment the written order of the (~~(supervisor of industrial~~
35 ~~insurance)~~) department issued in advance of the continuation shall be
36 necessary.

37 The (~~(supervisor of industrial insurance, the supervisor's~~
38 ~~designee,)~~) department or a self-insurer, as the case may be, in (~~(his~~

1 ~~or her~~) its sole discretion, may authorize inoculation or other
2 immunological treatment in cases in which a work-related activity has
3 resulted in probable exposure of the worker to a potential infectious
4 occupational disease. Authorization of such treatment does not bind
5 the department or self-insurer in any adjudication of a claim by the
6 same worker or the worker's beneficiary for an occupational disease.

7 **Sec. 41.** RCW 51.36.015 and 1994 c 94 s 1 are each amended to read
8 as follows:

9 Subject to the other provisions of this title, the health services
10 that are available to an injured worker under RCW 51.36.010 include
11 chiropractic care and evaluation. For the purposes of assisting the
12 department or self-insurer in making claims determinations, an injured
13 worker may be required by the department or self-insurer, as the case
14 may be, to undergo examination by a chiropractor licensed under chapter
15 18.25 RCW.

16 **Sec. 42.** RCW 51.36.020 and 1999 c 395 s 1 are each amended to read
17 as follows:

18 (1) When the injury to any worker is so serious as to require his
19 or her being taken from the place of injury to a place of treatment,
20 his or her employer shall, at the expense of the medical aid fund, or
21 self-insurer, as the case may be, furnish transportation to the nearest
22 place of proper treatment.

23 (2) Every worker whose injury results in the loss of one or more
24 limbs or eyes shall be provided with proper artificial substitutes and
25 every worker, who suffers an injury to an eye producing an error of
26 refraction, shall be once provided proper and properly equipped lenses
27 to correct such error of refraction and his or her disability rating
28 shall be based upon the loss of sight before correction.

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

32 (4) Every worker whose hearing aid or eyeglasses or lenses are
33 damaged, destroyed, or lost as a result of an industrial accident shall
34 have the same restored or replaced. The department or self-insurer, as
35 the case may be, shall be liable only for the cost of restoring damaged

1 hearing aids or eyeglasses to their condition at the time of the
2 accident.

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

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

14 (7) Whenever in the sole discretion of the (~~supervisor~~)
15 department or self-insurer, as the case may be, it is reasonable and
16 necessary to provide residence modifications necessary to meet the
17 needs and requirements of the worker who has sustained catastrophic
18 injury, the department or self-insurer may (~~be ordered to~~) pay an
19 amount not to exceed the state's average annual wage for one year as
20 determined under RCW 50.04.355(~~(, as now existing or hereafter~~
21 ~~amended,~~) toward the cost of such modifications or construction. Such
22 payment shall only be made for the construction or modification of a
23 residence in which the injured worker resides. Only one residence of
24 any worker may be modified or constructed under this subsection,
25 although (~~the supervisor may order~~) there may be more than one
26 payment for any one home, up to the maximum amount permitted by this
27 section.

28 (8)(a) Whenever in the sole discretion of the (~~supervisor~~)
29 department or self-insurer, as the case may be, it is reasonable and
30 necessary to modify a motor vehicle owned by a worker who has become an
31 amputee or becomes paralyzed because of an industrial injury, the
32 (~~supervisor may order~~) department or self-insurer may pay up to fifty
33 percent of the state's average annual wage for one year, as determined
34 under RCW 50.04.355, (~~to be paid by the department or self-insurer~~)
35 toward the costs thereof.

36 (b) In the sole discretion of the (~~supervisor~~) department or
37 self-insurer, as the case may be, after (~~his or her~~) its review, the

1 amount paid under this subsection may be increased by no more than four
2 thousand dollars by written order (~~(of the supervisor)~~).

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

6 **Sec. 43.** RCW 51.36.060 and 1991 c 89 s 3 are each amended to read
7 as follows:

8 Physicians examining or attending injured workers under this title
9 shall comply with rules and regulations adopted by the director, and
10 shall make such reports as may be requested by the department or self-
11 insurer upon the condition or treatment of any such worker, or upon any
12 other matters concerning such workers in their care. Except under RCW
13 49.17.210 and 49.17.250, all medical information in the possession or
14 control of any person and relevant to the particular injury in the
15 opinion of the department or self-insurer pertaining to any worker
16 whose injury or occupational disease is the basis of a claim under this
17 title shall be made available at any stage of the proceedings to the
18 employer, the claimant's representative, and the department upon
19 request, and no person shall incur any legal liability by reason of
20 releasing such information.

21 **Sec. 44.** RCW 51.36.070 and 2001 c 152 s 2 are each amended to read
22 as follows:

23 Whenever the (~~director~~) department or the self-insurer, as the
24 case may be, deems it necessary in order to resolve any medical issue,
25 a worker shall submit to examination by a physician or physicians
26 selected by the (~~director~~) department or self-insurer, with the
27 rendition of a report to the person ordering the examination. The
28 department or self-insurer shall provide the physician performing an
29 examination with all relevant medical records from the worker's claim
30 file. (~~The director, in his or her discretion, may charge~~) The cost
31 of such examination (or examinations to the self insurer or to the
32 medical aid fund as the case may be) shall be borne by the self-
33 insurer in a self-insured claim. The cost of said examination shall
34 include payment to the worker of reasonable expenses connected
35 therewith.

1 **Sec. 45.** RCW 51.48.017 and 1985 c 347 s 3 are each amended to read
2 as follows:

3 (1) If a self-insurer unreasonably delays or refuses to ((pay))
4 provide benefits to the worker as they become due ((there shall be paid
5 by the self-insurer upon order of the director)), but not after an
6 order closing the claim has become final by operation of law, the
7 department may order the self-insured employer to pay an additional
8 amount equal to five hundred dollars or twenty-five percent of the
9 amount then due, whichever is greater, which shall accrue for the
10 benefit of the claimant and shall be paid to him with the benefits
11 which may be assessed under this title. ((The director shall issue an
12 order determining whether there was an unreasonable delay or refusal to
13 pay benefits within thirty days upon the request of the claimant. Such
14 an order))

15 (2) The department may summarily deny a request for penalties if on
16 its face it is deemed frivolous; in all other cases the department
17 shall require the self-insured employer to file a written, substantive
18 response. In such event, the self-insured employer shall have twenty
19 working days to provide relevant documents to the department and
20 respond to the request for penalties by the claimant. The department
21 shall issue an order determining whether there was an unreasonable
22 delay or refusal to pay benefits within sixty days after receipt of the
23 documents requested from the self-insurer. Failure of the department
24 to review the request and issue a timely order shall result in the
25 issuance of an order denying the request for penalties. Any order
26 under this section shall conform to the requirements of RCW 51.52.050.

27 (3) In an allowed claim, the worker may request the department to
28 direct the self-insurer to issue an order concerning the provision of
29 benefits. The department may make such inquiries as circumstances
30 require. If the department requests information from a self-insurer by
31 certified mail, the self-insurer shall submit all information in its
32 possession concerning the claim within ten working days from the date
33 of receipt of such certified notice. The department may in writing
34 direct the self-insurer to issue an order within ninety days, or to
35 provide good cause why an order cannot be issued. If the self-insurer
36 fails to issue an order or to provide good cause within ninety days,
37 the department may, within thirty days, issue an order determining

1 whether the worker is entitled to the benefits and, if so, directing
2 the self-insurer to provide the benefits.

3 **Sec. 46.** RCW 51.48.040 and 2003 c 53 s 282 are each amended to
4 read as follows:

5 (1) The books, records and payrolls of the employer pertinent to
6 the administration of this title shall always be open to inspection by
7 the department or its traveling auditor, agent or assistant, for the
8 purpose of ascertaining the correctness of the payroll, the persons
9 employed, and such other information as may be necessary for the
10 department and its management under this title.

11 (2) Refusal on the part of the employer to submit his or her books,
12 records and payrolls for such inspection to the department, or any
13 assistant presenting written authority from the director, shall subject
14 the offending employer to a penalty determined by the director but not
15 to exceed two hundred fifty dollars for each offense and the individual
16 who personally gives such refusal is guilty of a misdemeanor.

17 (3) Any employer who fails to allow adequate inspection in
18 accordance with the requirements of this section is subject to having
19 its certificate of coverage revoked by order of the department and is
20 forever barred from questioning in any proceeding in front of the board
21 of industrial insurance appeals or any court, the correctness of any
22 assessment by the department based on any period for which such records
23 have not been produced for inspection.

24 (4) Claims processing practices of self-insured employers are
25 subject to audit by the department. Supporting documentation and
26 records shall be maintained in accordance with RCW 51.14.110.

27 (5) Audits of self-insured employers by the department shall be
28 conducted as necessary to determine compliance with this title and
29 rules adopted by the department to carry out the purposes of this
30 title, but shall not disturb any prior final orders issued in good
31 faith by the self-insured employer that have become final by operation
32 of law.

33 (6) If within two years of claim closure the department determines
34 by audit that the self-insurer has made payment of benefits because of
35 clerical error, mistake of identity, or innocent misrepresentation, the
36 department may require the self-insurer to correct the benefits paid or

1 payable. Any such order as a result of an audit shall not disturb the
2 order closing the claim.

3 (7) This section expires December 31, 2010.

4 **Sec. 47.** RCW 51.48.040 and 2003 c 53 s 282 are each amended to
5 read as follows:

6 (1) The books, records and payrolls of the employer pertinent to
7 the administration of this title shall always be open to inspection by
8 the department or its traveling auditor, agent or assistant, for the
9 purpose of ascertaining the correctness of the payroll, the persons
10 employed, and such other information as may be necessary for the
11 department and its management under this title.

12 (2) Refusal on the part of the employer to submit his or her books,
13 records and payrolls for such inspection to the department, or any
14 assistant presenting written authority from the director, shall subject
15 the offending employer to a penalty determined by the director but not
16 to exceed two hundred fifty dollars for each offense and the individual
17 who personally gives such refusal is guilty of a misdemeanor.

18 (3) Any employer who fails to allow adequate inspection in
19 accordance with the requirements of this section is subject to having
20 its certificate of coverage revoked by order of the department and is
21 forever barred from questioning in any proceeding in front of the board
22 of industrial insurance appeals or any court, the correctness of any
23 assessment by the department based on any period for which such records
24 have not been produced for inspection.

25 (4) Claims processing practices of self-insured employers are
26 subject to audit by the department. Supporting documentation and
27 records shall be maintained in accordance with RCW 51.14.110.

28 (5) Audits of self-insured employers by the department shall be
29 conducted as necessary to determine compliance with this title and
30 rules adopted by the department to carry out the purposes of this
31 title, but shall not disturb any prior final orders issued in good
32 faith by the self-insured employer that have become final by operation
33 of law.

34 **Sec. 48.** RCW 51.48.080 and 1985 c 347 s 7 are each amended to read
35 as follows:

36 (1) Every person, firm or corporation who violates or fails to

1 obey, observe or comply with any rule of the department (~~promulgated~~)
2 adopted under authority of this title, shall be subject to a penalty of
3 not to exceed five hundred dollars.

4 (2) Except as provided in subsection (3) of this section, the
5 department may impose penalties not to exceed two thousand five hundred
6 dollars against a self-insured employer when it determines by audit
7 pursuant to RCW 51.48.040 that the self-insured employer has:

8 (a) Failed to pay or provide benefits to a worker or on a worker's
9 behalf on a timely basis;

10 (b) Paid its injured workers monetary benefits in incorrect
11 amounts;

12 (c) Failed to issue allowance or rejection orders on a timely
13 basis;

14 (d) Failed to issue orders closing a claim within sixty days after
15 the attending physician has found an injured worker to be fixed and
16 stable and a permanent disability level has been established by a
17 preponderance of the medical evidence.

18 (3) The department may impose penalties not to exceed twenty-five
19 thousand dollars against a self-insured employer when it determines by
20 audit pursuant to RCW 51.48.040 that the self-insured employer has
21 intentionally and repeatedly committed violations set forth in
22 subsection (2)(a) through (d) of this section.

23 (4) Self-insured employer audits discovering claims processing and
24 clerical errors not involving violations set forth in subsection (2)(a)
25 through (d) of this section are not subject to assessment of penalties.

26 (5) The department shall adopt a schedule of penalties that will
27 take into account the severity and number of violations.

28 (6) Orders imposing penalties for violations described in this
29 section shall conform to the requirements of RCW 51.52.050.

30 **Sec. 49.** RCW 51.52.050 and 1987 c 151 s 1 are each amended to read
31 as follows:

32 (1) Except as provided in RCW 51.32.095, whenever the department or
33 self-insurer has made any order, decision, or award, it shall promptly
34 serve the worker, beneficiary, employer, or other person affected
35 thereby, with a copy thereof by mail, which shall be addressed to such
36 person at his or her last known address as shown by the records of the
37 department or self-insurer, as the case may be. The copy, in case the

1 same is a final order, decision, or award, shall bear on the same side
2 of the same page on which is found the amount of the award, a
3 statement, set in black faced type of at least ten point body or size,
4 that such final order, decision, or award shall become final within
5 sixty days from the date the order is communicated to the parties
6 unless a written request for reconsideration is filed with the
7 department of labor and industries, Olympia, and in cases involving a
8 self-insurer with the self-insurer, or an appeal is filed with the
9 board of industrial insurance appeals, Olympia(~~(:—PROVIDED, That)~~).
10 However, a department order or decision making demand, whether with or
11 without penalty, for repayment of sums paid to a provider of medical,
12 dental, vocational, or other health services rendered to an
13 industrially injured worker, shall state that such order or decision
14 shall become final within twenty days from the date the order or
15 decision is communicated to the parties unless a written request for
16 reconsideration is filed with the department of labor and industries,
17 Olympia, or an appeal is filed with the board of industrial insurance
18 appeals, Olympia.

19 (2) Except as provided in RCW 51.32.095, whenever the department or
20 self-insurer has taken any action or made any decision relating to any
21 phase of the administration of this title the worker, beneficiary,
22 employer, or other person aggrieved thereby may request reconsideration
23 (~~(of the department)~~), or may appeal to the board. In an appeal before
24 the board, the appellant shall have the burden of proceeding with the
25 evidence to establish a prima facie case for the relief sought in such
26 appeal(~~(:—PROVIDED, That)~~). However, in an appeal from an order of
27 (~~(the department)~~) that alleges fraud, the department or self-insured
28 employer shall initially introduce all evidence in its case in chief.
29 Any such person aggrieved by the decision and order of the board may
30 thereafter appeal to the superior court, as prescribed in this chapter.

31 (3) Except as provided in RCW 51.32.095, if the department is
32 requested to reconsider an order issued by a self-insurer, the
33 department shall promptly request the file from the self-insurer. The
34 department must issue an order affirming, modifying, reversing, or
35 remanding the order within sixty days of receipt of the file from the
36 self-insurer. However, for good cause, the department may once extend
37 the time for issuing an order for an additional sixty days. If the
38 department fails to issue an order within the time frames specified in

1 this section, the self-insurer's order is deemed affirmed, subject to
2 appeal. Upon receipt of the file in a request for reconsideration, the
3 department shall notify all parties of the dates the department
4 received the request and file, respectively, and the date upon which
5 the self-insurer's order will be deemed affirmed if the department
6 fails to take action. The notice shall also inform the parties that
7 any appeal pursuant to RCW 51.52.060 must be filed within sixty days
8 from the date the order is deemed affirmed. If such appeal is filed,
9 the department may not direct submission of further evidence under RCW
10 51.52.060.

11 **Sec. 50.** RCW 51.52.060 and 1995 c 253 s 1 and 1995 c 199 s 7 are
12 each reenacted and amended to read as follows:

13 (1)(a) Except as otherwise specifically provided in this section,
14 a worker, beneficiary, employer, health services provider, or other
15 person aggrieved by an order, decision, or award of the department or
16 self-insurer must, before he or she appeals to the courts, file with
17 the board and the director, by mail or personally, and in cases
18 involving a self-insurer, with the self-insurer, within sixty days from
19 the day on which a copy of the order, decision, or award was
20 communicated to such person, a notice of appeal to the board. However,
21 a health services provider or other person aggrieved by a department
22 order or decision making demand, whether with or without penalty,
23 solely for repayment of sums paid to a provider of medical, dental,
24 vocational, or other health services rendered to an industrially
25 injured worker must, before he or she appeals to the courts, file with
26 the board and the director, by mail or personally, within twenty days
27 from the day on which a copy of the order or decision was communicated
28 to the health services provider upon whom the department order or
29 decision was served, a notice of appeal to the board.

30 (b) Failure to file a notice of appeal with ~~((both))~~ the board
31 ~~((and))~~, the department, and the self-insurer, if applicable, shall not
32 be grounds for denying the appeal if the notice of appeal is filed with
33 ~~((either))~~ the board ~~((or))~~, the department, or the self-insurer. If
34 the notice of appeal does not demonstrate, on its face, that it was
35 sent to the department, the board, and the self-insurer, if applicable,
36 the recipient shall forward a copy of the notice to the other parties
37 not served.

1 (2) Within ten days of the date on which an appeal has been granted
2 by the board, the board shall notify the other interested parties to
3 the appeal of the receipt of the appeal and shall forward a copy of the
4 notice of appeal to the other interested parties. Within twenty days
5 of the receipt of such notice of the board, the worker or the employer
6 may file with the board a cross-appeal from the order (~~of the~~
7 ~~department~~) from which the original appeal was taken.

8 (3) If within the time limited for filing a notice of appeal to the
9 board from an order, decision, or award (~~of the department~~), the
10 department directs the submission of further evidence or the
11 investigation of any further fact, the time for filing the notice of
12 appeal shall not commence to run until the person has been advised in
13 writing of the final decision of the department in the matter. In the
14 event the department directs the submission of further evidence or the
15 investigation of any further fact, as provided in this section, the
16 department shall render a final order, decision, or award within ninety
17 days from the date further submission of evidence or investigation of
18 further fact is ordered which time period may be extended by the
19 department for good cause stated in writing to all interested parties
20 for an additional ninety days.

21 (4) The department, either within the time limited for appeal, or
22 within thirty days after receiving a notice of appeal, may:

23 (a) Modify, reverse, or change any order, decision, or award; or

24 (b)(i) Except as provided in (b)(ii) of this subsection, hold an
25 order, decision, or award in abeyance for a period of ninety days which
26 time period may be extended by the department for good cause stated in
27 writing to all interested parties for an additional ninety days pending
28 further investigation in light of the allegations of the notice of
29 appeal; or

30 (ii) Hold an order, decision, or award issued under RCW 51.32.160
31 in abeyance for a period not to exceed ninety days from the date of
32 receipt of an application under RCW 51.32.160. The department may
33 extend the ninety-day time period for an additional sixty days for good
34 cause.

35 For purposes of this subsection, good cause includes delay that
36 results from conduct of the claimant that is subject to sanction under
37 RCW 51.32.110.

1 The board shall deny the appeal upon the issuance of an order under
2 (b)(i) or (ii) of this subsection holding an earlier order, decision,
3 or award in abeyance, without prejudice to the appellant's right to
4 appeal from any subsequent determinative order issued by the
5 department.

6 This subsection (4)(b) does not apply to applications deemed
7 granted under RCW 51.32.160.

8 (5) An employer shall have the right to appeal an application
9 deemed granted under RCW 51.32.160 on the same basis as any other
10 application adjudicated pursuant to that section.

11 (6) A provision of this section shall not be deemed to change,
12 alter, or modify the practice or procedure of the department for the
13 payment of awards pending appeal.

14 **Sec. 51.** RCW 51.52.070 and 1977 ex.s. c 350 s 77 are each amended
15 to read as follows:

16 The notice of appeal to the board shall set forth in full detail
17 the grounds upon which the person appealing considers such order,
18 decision, or award is unjust or unlawful, and shall include every issue
19 to be considered by the board, and it must contain a detailed statement
20 of facts upon which such worker, beneficiary, employer, or other person
21 relies in support thereof. The worker, beneficiary, employer, or other
22 person shall be deemed to have waived all objections or irregularities
23 concerning the matter on which such appeal is taken other than those
24 specifically set forth in such notice of appeal or appearing in the
25 records of the department or self-insurer. The department or self-
26 insurer shall promptly transmit its original record, or a legible copy
27 thereof produced by mechanical, photographic, or electronic means, in
28 such matter to the board.

29 **Sec. 52.** RCW 51.52.080 and 1971 ex.s. c 289 s 69 are each amended
30 to read as follows:

31 If the notice of appeal raises no issue or issues of fact and the
32 board finds that the department or self-insurer properly and lawfully
33 decided all matters raised by such appeal it may, without further
34 hearing, deny the same and confirm the ((department's)) decision or
35 award, or if the ((department's)) record sustains the contention of the

1 person appealing to the board, it may, without further hearing, allow
2 the relief asked in such appeal; otherwise, it shall grant the appeal.

3 NEW SECTION. **Sec. 53.** A new section is added to chapter 51.14 RCW
4 to read as follows:

5 For purposes of this title, "department or self-insurer, as the
6 case may be," means the department in claims insured by the state fund,
7 and the self-insurer in claims self-insured by the employer.

8 NEW SECTION. **Sec. 54.** RCW 51.32.190 (Self-insurers--Notice of
9 denial of claim, reasons--Procedure--Powers and duties of director) and
10 1996 c 58 s 2, 1982 1st ex.s. c 20 s 3, 1977 ex.s. c 350 s 54, 1972
11 ex.s. c 43 s 25, & 1971 ex.s. c 289 s 47 are each repealed.

12 NEW SECTION. **Sec. 55.** This act applies to all open claims and
13 claims for which an application to reopen pursuant to RCW 51.32.160 is
14 filed or pending on or after January 1, 2006.

15 NEW SECTION. **Sec. 56.** (1) Except for section 47 of this act, this
16 act takes effect January 1, 2006.

17 (2) Section 47 of this act takes effect December 31, 2010.

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