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SENATE BILL 6302

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State of Washington

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By Senators Kohl-Welles, Conway, Keiser, Kline, Pridemore, and Chase

Read first time 01/17/12. Referred to Committee on Labor, Commerce & Consumer Protection.

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

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

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

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

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

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

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

- 12 (1) No investigatory activity has taken place for thirty days;
- 13 (2) An investigation is closed;
- 14 (3) Information obtained during the investigation is considered or  
15 used for any claims management decision; or
- 16 (4) Ten days prior to review by any medical or vocational  
17 professional of any information obtained during the investigation.

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

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

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

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

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

33 "Self-insurer" or "self-insured employer" means an employer or

1 group of employers which has been authorized under this title to carry  
2 its own liability to its employees covered by this title.

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

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

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

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

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

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

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

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

5        ~~(2))~~ provide the employee's claim file to the department within  
6 fifteen days of receipt of the dispute, notice of audit, or department  
7 request.

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

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

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

19        (d) Claims data reported to the department electronically by  
20 individual self-insurers are confidential in accordance with RCW  
21 51.16.070 and 51.28.070. The department may publish, for statistical  
22 purposes, aggregated claims data that contain no personal identifiers.

23        ~~((3))~~ (4) The department shall adopt rules to administer this  
24 section.

25        NEW SECTION. Sec. 8. A new section is added to chapter 51.32 RCW  
26 to read as follows:

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

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

1 (3) When an employer or its representative's third-party  
2 administrator, or claims management entity schedules a meeting or  
3 conversation by any means with a current or former treating medical  
4 provider, the employer shall provide written notice of the conversation  
5 to the claimant at least fourteen days prior to the scheduled  
6 conversation. Following the conversation, a memorandum describing the  
7 information given to the provider, the questions asked of the provider,  
8 and the responses given by the provider must be sent to the claimant  
9 within five days of the conversation. This information must be  
10 provided regardless of the source of the information, any claim of  
11 privilege, or attorney work product.

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

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

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

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

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

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

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

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

29 (7)(a) If a claim (i) is accepted by a self-insurer after June 30,  
30 1986, and before August 1, 1997, (ii) involves only medical treatment  
31 and the payment of temporary disability compensation under RCW  
32 51.32.090 or only the payment of temporary disability compensation  
33 under RCW 51.32.090, (iii) at the time medical treatment is concluded  
34 does not involve permanent disability, (iv) is one with respect to  
35 which the department has not intervened under subsection (6) of this  
36 section, and (v) the injured worker has returned to work with the self-  
37 insured employer of record, whether at the worker's previous job or at  
38 a job that has comparable wages and benefits, the claim may be closed

1 by the self-insurer, subject to reporting of claims to the department  
2 in a manner prescribed by department rules adopted under chapter 34.05  
3 RCW.

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

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

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

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

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

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

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

32 (c) Upon closure of a claim under this subsection (9), the self-  
33 insurer shall enter a written order, communicated to the worker and the  
34 department self-insurance section, which contains the following  
35 statement clearly set forth in bold-face type: "This order constitutes  
36 notification that your claim is being closed with such medical benefits  
37 and temporary disability compensation as provided to date and with such  
38 award for permanent partial disability, if any, as set forth below, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (i) Willful false statement; or

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

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

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

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

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

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

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

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

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

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

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

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

36 (1) Except for claim resolution structured settlement agreements,  
37 it shall be unlawful for an attorney engaged in the representation of

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

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

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

37 (4) If, on appeal to the board from a decision or order of the  
38 department denying the reopening of a claim previously resolved with a

1 structured settlement agreement, denying treatment or payment for  
2 treatment, or segregating a medical condition or conditions as  
3 unrelated to the claim, the decision is reversed or modified and the  
4 relief sought by the claimant is fully or partially awarded, a  
5 reasonable fee for the services of the worker's attorney shall be fixed  
6 by the board, and the board shall order reimbursement for all  
7 reasonable costs of litigation, including but not limited to fees of  
8 the medical and other witnesses. In cases of self-insured employers,  
9 the attorney fees fixed by the board and the costs set by the board  
10 shall be payable directly by the self-insured employer. In all other  
11 cases, the fees and costs shall be paid by the department out of the  
12 administrative fund.

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

16 ((+5)) (6) Any person who violates this section is guilty of a  
17 misdemeanor.

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

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