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**SUBSTITUTE SENATE BILL 5474**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senate Labor & Commerce (originally sponsored by Senator Keiser)

READ FIRST TIME 02/22/19.

1 AN ACT Relating to permitting self-insurers to send duplicates of  
2 certain orders made by the department of labor and industries; and  
3 amending RCW 51.52.050.

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

5 **Sec. 1.** RCW 51.52.050 and 2011 c 290 s 9 are each amended to  
6 read as follows:

7 (1) Whenever the department has made any order, decision, or  
8 award, it shall promptly serve the worker, beneficiary, employer, or  
9 other person affected thereby, with a copy thereof by mail, or if the  
10 worker, beneficiary, employer, or other person affected thereby  
11 chooses, the department may send correspondence and other legal  
12 notices by secure electronic means except for orders communicating  
13 the closure of a claim. In the event the department has made an order  
14 communicating the closure of a claim of a self-insured employer, the  
15 self-insured employer may serve the department order provided the  
16 self-insured employer does so using a separate, secure, and  
17 verifiable nonelectronic means of delivery and includes the  
18 department prescribed notice explaining the contents of the order and  
19 any protest or appeal rights. The service by the self-insured  
20 employer is a communication for the purposes of filing an appeal  
21 under RCW 51.52.060. Persons who choose to receive correspondence and

1 other legal notices electronically shall be provided information to  
2 assist them in ensuring all electronic documents and communications  
3 are received. Correspondence and notices must be addressed to such a  
4 person at his or her last known postal or electronic address as shown  
5 by the records of the department. Correspondence and notices sent  
6 electronically are considered received on the date sent by the  
7 department. The copy, in case the same is a final order, decision, or  
8 award, shall bear on the same side of the same page on which is found  
9 the amount of the award, a statement, set in black faced type of at  
10 least ten point body or size, that such final order, decision, or  
11 award shall become final within sixty days from the date the order is  
12 communicated to the parties unless a written request for  
13 reconsideration is filed with the department of labor and industries,  
14 Olympia, or an appeal is filed with the board of industrial insurance  
15 appeals, Olympia. However, a department order or decision making  
16 demand, whether with or without penalty, for repayment of sums paid  
17 to a provider of medical, dental, vocational, or other health  
18 services rendered to an industrially injured worker, shall state that  
19 such order or decision shall become final within twenty days from the  
20 date the order or decision is communicated to the parties unless a  
21 written request for reconsideration is filed with the department of  
22 labor and industries, Olympia, or an appeal is filed with the board  
23 of industrial insurance appeals, Olympia.

24 (2) (a) Whenever the department has taken any action or made any  
25 decision relating to any phase of the administration of this title  
26 the worker, beneficiary, employer, or other person aggrieved thereby  
27 may request reconsideration of the department, or may appeal to the  
28 board. In an appeal before the board, the appellant shall have the  
29 burden of proceeding with the evidence to establish a prima facie  
30 case for the relief sought in such appeal.

31 (b) An order by the department awarding benefits shall become  
32 effective and benefits due on the date issued. Subject to (b) (i) and  
33 (ii) of this subsection, if the department order is appealed the  
34 order shall not be stayed pending a final decision on the merits  
35 unless ordered by the board. Upon issuance of the order granting the  
36 appeal, the board will provide the worker with notice concerning the  
37 potential of an overpayment of benefits paid pending the outcome of  
38 the appeal and the requirements for interest on unpaid benefits  
39 pursuant to RCW 51.52.135. A worker may request that benefits cease  
40 pending appeal at any time following the employer's motion for stay

1 or the board's order granting appeal. The request must be submitted  
2 in writing to the employer, the board, and the department. Any  
3 employer may move for a stay of the order on appeal, in whole or in  
4 part. The motion must be filed within fifteen days of the order  
5 granting appeal. The board shall conduct an expedited review of the  
6 claim file provided by the department as it existed on the date of  
7 the department order. The board shall issue a final decision within  
8 twenty-five days of the filing of the motion for stay or the order  
9 granting appeal, whichever is later. The board's final decision may  
10 be appealed to superior court in accordance with RCW 51.52.110. The  
11 board shall grant a motion to stay if the moving party demonstrates  
12 that it is more likely than not to prevail on the facts as they  
13 existed at the time of the order on appeal. The board shall not  
14 consider the likelihood of recoupment of benefits as a basis to grant  
15 or deny a motion to stay. If a self-insured employer prevails on the  
16 merits, any benefits paid may be recouped pursuant to RCW 51.32.240.

17 (i) If upon reconsideration requested by a worker or medical  
18 provider, the department has ordered an increase in a permanent  
19 partial disability award from the amount reflected in an earlier  
20 order, the award reflected in the earlier order shall not be stayed  
21 pending a final decision on the merits. However, the increase is  
22 stayed without further action by the board pending a final decision  
23 on the merits.

24 (ii) If any party appeals an order establishing a worker's wages  
25 or the compensation rate at which a worker will be paid temporary or  
26 permanent total disability or loss of earning power benefits, the  
27 worker shall receive payment pending a final decision on the merits  
28 based on the following:

29 (A) When the employer is self-insured, the wage calculation or  
30 compensation rate the employer most recently submitted to the  
31 department; or

32 (B) When the employer is insured through the state fund, the  
33 highest wage amount or compensation rate uncontested by the parties.

34 Payment of benefits or consideration of wages at a rate that is  
35 higher than that specified in (b)(ii)(A) or (B) of this subsection is  
36 stayed without further action by the board pending a final decision  
37 on the merits.

38 (c) In an appeal from an order of the department that alleges  
39 willful misrepresentation, the department or self-insured employer  
40 shall initially introduce all evidence in its case in chief. Any such

1 person aggrieved by the decision and order of the board may  
2 thereafter appeal to the superior court, as prescribed in this  
3 chapter.

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