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**SENATE BILL 5046**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Conway, Keiser, and King

AN ACT Relating to workers' compensation claim resolution settlement agreements; amending RCW 51.04.062, 51.04.063, 51.04.065, 51.04.069, and 51.52.120; reenacting and amending RCW 42.56.230; and declaring an emergency.

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

**Sec.**  RCW 42.56.230 and 2019 c 470 s 8, 2019 c 239 s 2, and 2019 c 213 s 2 are each reenacted and amended to read as follows:

The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2)(a) Personal information:

(i) For a child enrolled in licensed child care in any files maintained by the department of children, youth, and families;

(ii) For a child enrolled in a public or nonprofit program serving or pertaining to children, adolescents, or students, including but not limited to early learning or child care services, parks and recreation programs, youth development programs, and after-school programs;

(iii) For the family members or guardians of a child who is subject to the exemption under this subsection (2) if the family member or guardian has the same last name as the child or if the family member or guardian resides at the same address as the child and disclosure of the family member's or guardian's information would result in disclosure of the personal information exempted under (a)(i) and (ii) of this subsection; or

(iv) For substitute caregivers who are licensed or approved to provide overnight care of children by the department of children, youth, and families.

(b) Emergency contact information under this subsection (2) may be provided to appropriate authorities and medical personnel for the purpose of treating the individual during an emergency situation;

(3) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

(4) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would: (a) Be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance authorized under RCW 35.102.145; or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

(5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial information as defined in RCW 9.35.005 including social security numbers, except when disclosure is expressly required by or governed by other law;

(6) Personal and financial information related to a small loan or any system of authorizing a small loan in RCW 31.45.093;

(7)(a) Any record used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicard.

(b) Information provided under RCW 46.20.111 that indicates that an applicant declined to register with the selective service system.

(c) Any record pertaining to a vehicle license plate, driver's license, or identicard issued under RCW 46.08.066 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement, confidential public health work, public assistance fraud, or child support investigative activity. This exemption does not prevent the release of the total number of vehicle license plates, drivers' licenses, or identicards that, under RCW 46.08.066, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse.

(d) Any record pertaining to a vessel registration issued under RCW 88.02.330 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement activity. This exemption does not prevent the release of the total number of vessel registrations that, under RCW 88.02.330, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse.

Upon request by the legislature, the department of licensing shall provide a report to the legislature containing all of the information in (c) of this subsection (7) and this subsection (7)(d) that is subject to public disclosure;

(8) All information related to individual claim((~~s~~)) resolution ((~~structured~~)) settlement agreements submitted to the board of industrial insurance appeals under RCW 51.04.063, other than final orders from the board of industrial insurance appeals. The board of industrial insurance appeals shall provide to the department of labor and industries copies of all final claim resolution settlement agreements;

((~~Upon request by the legislature, the department of licensing shall provide a report to the legislature containing all of the information in subsection (7)(c) and (d) of this section that is subject to public disclosure;~~))

(9) Voluntarily submitted information contained in a database that is part of or associated with enhanced 911 emergency communications systems, or information contained or used in emergency notification systems as provided under RCW 38.52.575 and 38.52.577;

(10) Until the person reaches eighteen years of age, information, otherwise disclosable under chapter 29A.08 RCW, that relates to a future voter, except for the purpose of processing and delivering ballots;

(11) All information submitted by a person to the state, either directly or through a state-licensed gambling establishment, or Indian tribes, or tribal enterprises that own gambling operations or facilities with class III gaming compacts, as part of the self-exclusion program established in RCW 9.46.071 or 67.70.040 for people with a gambling problem or gambling disorder; and

(12) Names, addresses, or other personal information of individuals who participated in the bump-fire stock buy-back program under RCW 43.43.920.

**Sec.**  RCW 51.04.062 and 2011 1st sp.s. c 37 s 301 are each amended to read as follows:

The legislature finds that Washington state's workers' compensation system should be designed to focus on achieving the best outcomes for injured workers. Further, the legislature recognizes that controlling pension costs is key to a financially sound workers' compensation system for employers and workers. To these ends, the legislature recognizes that certain workers would benefit from an option that allows them to initiate claim resolution ((~~structured~~)) settlements in order to pursue work or retirement goals independent of the system, provided that sufficient protections for injured workers are included.

**Sec.**  RCW 51.04.063 and 2014 c 142 s 2 are each amended to read as follows:

(1) Notwithstanding RCW 51.04.060 or any other provision of this title, ((~~beginning on January 1, 2012,~~)) an injured worker who is at least ((~~fifty-five years of age on or after January 1, 2012, fifty-three years of age on or after January 1, 2015, or~~)) fifty years of age ((~~on or after January 1, 2016,~~)) may choose from the following: (a) To continue to receive all benefits for which they are eligible under this title, (b) to participate in vocational training if eligible, or (c) to initiate and agree to a resolution of their claim with a ((~~structured~~)) claim resolution settlement.

(2)(a) As provided in this section, the parties to an allowed claim may initiate and agree to resolve a claim with a ((~~structured~~)) claim resolution settlement for all benefits other than medical. Parties as defined in (b) of this subsection may only initiate claim resolution ((~~structured~~)) settlements if at least one hundred eighty days have passed since the claim was received by the department or self-insurer and the order allowing the claim is final and binding. All requirements of this title regarding entitlement to and payment of benefits will apply during this period. All claim resolution ((~~structured~~)) settlement agreements must be approved by the board of industrial insurance appeals.

(b) For purposes of this section, "parties" means:

(i) For a state fund claim, the worker, the employer, and the department. The employer will not be a party if the costs of the claim or claims are no longer included in the calculation of the employer's experience factor used to determine premiums, if they cannot be located, are no longer in business, or they fail to respond or decline to participate after timely notice of the claim resolution settlement process provided by the board and the department.

(ii) For a self-insured claim, the worker and the employer.

(c) The claim resolution ((~~structured~~)) settlement agreements shall:

(i) Bind the parties with regard to all aspects of a claim except medical benefits unless revoked by one of the parties as provided in subsection (6) of this section;

(ii) ((~~Provide~~)) At the option of the parties, either be paid out in a single lump sum or be paid on a structured basis. If the parties opt to have the settlement paid based on a structured basis, the agreement shall provide a periodic payment schedule to the worker equal to at least twenty-five percent but not more than one hundred fifty percent of the average monthly wage in the state pursuant to RCW 51.08.018, except for the initial payment which may be up to six times the average monthly wage in the state pursuant to RCW 51.08.018;

(iii) Not set aside or reverse an allowance order;

(iv) Not subject any employer who is not a signatory to the agreement to any responsibility or burden under any claim; and

(v) Not subject any funds covered under this title to any responsibility or burden without prior approval from the director or designee.

(d) For state fund claims, the department shall negotiate the claim resolution ((~~structured~~)) settlement agreement with the worker or their representative and with the employer or employers and their representative or representatives.

(e) For self-insured claims, the self-insured employer shall negotiate the agreement with the worker or his or her representative. Workers of self-insured employers who are unrepresented may request that the office of the ombuds for self-insured injured workers provide assistance or be present during negotiations.

(f) Terms of the agreement may include the parties' agreement that the claim shall remain open for future necessary medical or surgical treatment related to the injury where there is a reasonable expectation such treatment is necessary. The parties may also agree that specific future treatment shall be provided without the application required in RCW 51.32.160.

(g) Any claim resolution ((~~structured~~)) settlement agreement entered into under this section must be in writing and signed by the parties or their representatives and must clearly state that the parties understand and agree to the terms of the agreement.

(h) If a worker is not represented by an attorney at the time of signing a claim resolution ((~~structured~~)) settlement agreement, the parties must forward a copy of the signed agreement to the board with a request for a conference with an industrial appeals judge. The industrial appeals judge must schedule a conference with all parties within fourteen days for the purpose of (i) reviewing the terms of the proposed settlement agreement by the parties; and (ii) ensuring the worker has an understanding of the benefits generally available under this title and that a claim resolution ((~~structured~~)) settlement agreement may alter the benefits payable on the claim or claims. The judge may schedule the initial conference for a later date with the consent of the parties.

(i) Before approving the agreement, the industrial appeals judge shall ensure the worker has an adequate understanding of the agreement and its consequences to the worker.

(j) The industrial appeals judge may approve a claim resolution ((~~structured~~)) settlement agreement only if the judge finds that the agreement is in the best interest of the worker. When determining whether the agreement is in the best interest of the worker, the industrial appeals judge shall consider the following factors, taken as a whole, with no individual factor being determinative:

(i) The nature and extent of the injuries and disabilities of the worker;

(ii) The age and life expectancy of the injured worker;

(iii) Other benefits the injured worker is receiving or is entitled to receive and the effect a claim resolution ((~~structured~~)) settlement agreement might have on those benefits; and

(iv) The marital or domestic partnership status of the injured worker.

(k) Within seven days after the conference, the industrial appeals judge shall issue an order allowing or rejecting the claim resolution ((~~structured~~)) settlement agreement. There is no appeal from the industrial appeals judge's decision.

(l) If the industrial appeals judge issues an order allowing the claim resolution ((~~structured~~)) settlement agreement, the order must be submitted to the board.

(3) Upon receiving the agreement, the board shall approve it within thirty working days of receipt unless it finds that:

(a) The parties have not entered into the agreement knowingly and willingly;

(b) The agreement does not meet the requirements of a claim resolution ((~~structured~~)) settlement agreement;

(c) The agreement is the result of a material misrepresentation of law or fact;

(d) The agreement is the result of harassment or coercion; or

(e) The agreement is unreasonable as a matter of law.

(4) If a worker is represented by an attorney at the time of signing a claim resolution ((~~structured~~)) settlement agreement, the parties shall submit the agreement directly to the board without the conference described in this section.

(5) If the board approves the agreement, it shall provide notice to all parties. The department shall place the agreement in the applicable claim file or files.

(6) A party may revoke consent to the claim resolution ((~~structured~~)) settlement agreement by providing written notice to the other parties and the board within thirty days after the date the agreement is approved by the board.

(7) To the extent the worker is entitled to any benefits while a claim resolution ((~~structured~~)) settlement agreement is being negotiated or during the revocation period of an agreement, the benefits must be paid pursuant to the requirements of this title until the agreement becomes final.

(8) A claim resolution ((~~structured~~)) settlement agreement that meets the conditions in this section and that has become final and binding as provided in this section is binding on all parties to the agreement as to its terms and the injuries and occupational diseases to which the agreement applies. A claim resolution ((~~structured~~)) settlement agreement that has become final and binding is not subject to appeal.

(9) All payments made to a worker pursuant to a final claim resolution ((~~structured~~)) settlement agreement must be reported to the department as claims costs pursuant to this title. If a self-insured employer contracts with a third-party administrator for claim services and the payment of benefits under this title, the third-party administrator shall also disburse the ((~~structured~~)) claim resolution settlement payments pursuant to the agreement.

(10) Claims closed pursuant to a claim resolution ((~~structured~~)) settlement agreement can be reopened pursuant to RCW 51.32.160 for medical treatment only. Further temporary total, temporary partial, permanent partial, or permanent total benefits are not payable under the same claim or claims for which a claim resolution ((~~structured~~)) settlement agreement has been approved by the board and has become final.

(11) Parties aggrieved by the failure of any other party to comply with the terms of a claim resolution ((~~structured~~)) settlement agreement have one year from the date of failure to comply to petition to the board. If the board determines that a party has failed to comply with an agreement, it will order compliance and will impose a penalty payable to the aggrieved party of up to twenty-five percent of the monetary amount unpaid at the time the petition for noncompliance was filed. The board will also decide on any disputes as to attorneys' fees for services related to claim resolution ((~~structured~~)) settlement agreements.

(12) Parties and their representatives may not use settlement offers or the claim resolution ((~~structured~~)) settlement agreement process to harass or coerce any party. If the department determines that an employer has engaged in a pattern of harassment or coercion, the employer may be subject to penalty or corrective action, and may be removed from the retrospective rating program or be decertified from self-insurance under RCW 51.14.030.

(13) All information related to individual claim((~~s~~)) resolution ((~~structured~~)) settlement agreements submitted to the board of industrial insurance appeals, other than final orders from the board of industrial insurance appeals, is private and exempt from disclosure under chapter 42.56 RCW. The board of industrial insurance appeals shall provide to the department copies of all final claim resolution settlement agreements.

(14) Information gathered during the claim((~~s~~)) resolution ((~~structured~~)) settlement agreement process, including but not limited to forms filled out by the parties and testimony during a claim((~~s~~)) resolution ((~~structured~~)) settlement conference before the board of industrial insurance appeals, is a statement made in the course of compromise negotiations and is inadmissible in any future litigation.

**Sec.**  RCW 51.04.065 and 2011 1st sp.s. c 37 s 303 are each amended to read as follows:

The department must maintain copies of all claim resolution ((~~structured~~)) settlement agreements entered into between the parties and furnish copies of such agreements to any party actively negotiating a subsequent claim resolution ((~~structured~~)) settlement agreement with the worker on any allowed claim when requested. An employer may not consider a prior agreement when making a decision about hiring or the terms or conditions of employment.

**Sec.**  RCW 51.04.069 and 2011 1st sp.s. c 37 s 306 are each amended to read as follows:

On December 1, 2011, and annually thereafter through December 1, 2014, the department shall report annually to the appropriate committees of the legislature on the implementation of claim resolution ((~~structured~~)) settlement agreements. In calendar years 2015, 2019, and 2023, the department shall contract for an independent study of claim resolution ((~~structured~~)) settlement agreements approved by the board under this section. The study must be performed by a researcher with experience in workers' compensation issues. When selecting the independent researcher, the department shall consult with the workers' compensation advisory committee. The study must evaluate the quality and effectiveness of ((~~structured~~)) claim resolution settlement agreements of state fund and self-insured claims, provide information on the impact of these agreements to the state fund and to self-insured employers, and evaluate the outcomes of workers who have resolved their claims through the claim resolution ((~~structured~~)) settlement agreement process. The study must be submitted to the appropriate committees of the legislature.

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

(1) Except for claim resolution ((~~structured~~)) settlement agreements, it shall be unlawful for an attorney engaged in the representation of any worker or beneficiary to charge for services in the department any fee in excess of a reasonable fee, of not more than thirty percent of the increase in the award secured by the attorney's services. Such reasonable fee shall be fixed by the director or the director's designee for services performed by an attorney for such worker or beneficiary, if written application therefor is made by the attorney, worker, or beneficiary within one year from the date the final decision and order of the department is communicated to the party making the application.

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

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

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

(5) Any person who violates this section is guilty of a misdemeanor.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**