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**SENATE BILL 5801**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senators Keiser, Conway, Hasegawa, and Nobles; by request of Department of Labor & Industries

AN ACT Relating to attorney and witness fees in industrial insurance court appeals; and amending RCW 51.52.130.

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

**Sec.**  RCW 51.52.130 and 2007 c 490 s 4 are each amended to read as follows:

(1) ((~~If, on appeal to the superior or appellate court from the decision and order of the board, said decision and order 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, a reasonable fee for the services of the worker's or beneficiary's attorney shall be fixed by the court.~~)) (a) The department will pay a worker's or beneficiary's attorneys' fees, fees of medical and other witnesses, and other statutory costs out of the department's administrative fund when the worker or beneficiary appeals a decision of the board, and the court reverses or modifies the board's order and grants additional relief.

(b) The employer or retrospective rating group will pay a worker's or beneficiary's attorneys' fees, fees of medical and other witnesses, and other statutory costs when the employer or retrospective rating group appeals a decision of the board, and the court sustains in full or in part the worker's or beneficiary's right to relief.

(c) In fixing the ((~~fee~~)) worker's or beneficiary's attorney fees under (a) and (b) of this subsection, the court ((~~shall~~)) will take into consideration the ((~~fee or~~)) fees((~~, if any,~~)) fixed ((~~by the director and the board~~)) for such attorney's services before the department and the board. If the court finds ((~~that the fee fixed by the director or by the board is~~)) the fees inadequate for services performed ((~~before the department or board~~)), or if the director or the board ((~~has~~)) fixed no fee ((~~for such services~~)), then the court ((~~shall~~)) will fix a fee for the attorney's services before the department, or the board, as the case may be, in addition to the fees fixed for the services in the court. ((~~If in a worker or beneficiary appeal the decision and order of the board is reversed or modified and if the accident fund or medical aid fund is affected by the litigation, or if in an appeal by the department or employer the worker or beneficiary's right to relief is sustained, or in an appeal by a worker involving a state fund employer with twenty-five employees or less, in which the department does not appear and defend, and the board order in favor of the employer is sustained, the attorney's fee fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable out of the administrative fund of the department.~~))

(d) The department will pay a state fund employer's attorneys' fees out of the department's administrative fund when the employer has 25 employees or less and when a worker appeals the board decision, and the department does not appear and defend, and the board order in favor of the employer is sustained.

(e) In the case of self-insured employers, the attorney fees fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable directly by the self-insured employer.

(2) In an appeal to the superior or appellate court involving the presumption established under RCW 51.32.185 or 51.32.187, the attorney's fee shall be payable as set forth under RCW 51.32.185 or 51.32.187.

**--- END ---**