

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1607

Chapter 416, Laws of 1997

55th Legislature
1997 Regular Session

DETERMINATION OF PARTIAL PERMANENT DISABILITY BENEFITS BY
INDUSTRIAL INSURANCE SELF-INSURERS

EFFECTIVE DATE: 7/27/97

Passed by the House April 21, 1997
Yeas 60 Nays 38

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate April 10, 1997
Yeas 27 Nays 21

BRAD OWEN
President of the Senate

Approved May 19, 1997

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1607** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

May 19, 1997 - 7:25 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1607

Passed Legislature - 1997 Regular Session

AS AMENDED BY THE SENATE

State of Washington 55th Legislature 1997 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives McMorris, Thompson, Dyer, Sheldon, Boldt, Honeyford, Lisk, Clements, Mulliken and Mielke)

Read first time 03/05/97.

1 AN ACT Relating to determination of benefits for permanent partial
2 disability by industrial insurance self-insurers; amending RCW
3 51.32.055; and creating a new section.

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

5 **Sec. 1.** RCW 51.32.055 and 1994 c 97 s 1 are each amended to read
6 as follows:

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

13 (2) All determinations of permanent disabilities shall be made by
14 the department, except as otherwise authorized in subsection (9) of
15 this section. Either the worker, employer, or self-insurer may make a
16 request or the inquiry may be initiated by the director or, as
17 authorized in subsection (9) of this section, by the self-insurer on
18 ((his—~~or~~—her)) the director or the self-insurer's own motion.
19 Determinations shall be required in every instance where permanent

1 disability is likely to be present. All medical reports and other
2 pertinent information in the possession of or under the control of the
3 employer or, if the self-insurer has made a request to the department,
4 in the possession of or under the control of the self-insurer shall be
5 forwarded to the director with the request.

6 (3) A request for determination of permanent disability shall be
7 examined by the department or, if authorized in subsection (9) of this
8 section, the self-insurer, and the department shall issue an order
9 ((shall issue)) in accordance with RCW 51.52.050 or, in the case of a
10 self-insured employer, the self-insurer may: (a) Enter a written
11 order, communicated to the worker and the department self-insurance
12 section in accordance with subsection (9) of this section, or (b)
13 request the department to issue an order in accordance with RCW
14 51.52.050.

15 (4) The department or, in cases authorized in subsection (9) of
16 this section, the self-insurer may require that the worker present
17 himself or herself for a special medical examination by a physician or
18 physicians selected by the department, and the department or, in cases
19 authorized in subsection (9) of this section, the self-insurer may
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) 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 cost
29 of the medical bureau in a manner to be determined by the department.

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

36 (7)(a) If a claim (i) is accepted by a self-insurer after June 30,
37 1986, and before August 1, 1997, (ii) involves only medical treatment
38 and the payment of temporary disability compensation under RCW
39 51.32.090 or only the payment of temporary disability compensation

1 under RCW 51.32.090, (iii) at the time medical treatment is concluded
2 does not involve permanent disability, (iv) is one with respect to
3 which the department has not intervened under subsection (6) of this
4 section, and (v) the injured worker has returned to work with the self-
5 insured employer of record, whether at the worker's previous job or at
6 a job that has comparable wages and benefits, the claim may be closed
7 by the self-insurer, subject to reporting of claims to the department
8 in a manner prescribed by department rules adopted under chapter 34.05
9 RCW.

10 (b) All determinations of permanent disability for claims accepted
11 under this subsection (7) by self-insurers ((after June 30, 1986,))
12 shall be made by the self-insured section of the department under
13 subsections (1) through (4) of this section.

14 (c) Upon closure of a claim under (a) of this subsection, the self-
15 insurer shall enter a written order, communicated to the worker and the
16 department self-insurance section, which contains the following
17 statement clearly set forth in bold face type: "This order constitutes
18 notification that your claim is being closed with medical benefits and
19 temporary disability compensation only as provided, and with the
20 condition you have returned to work with the self-insured employer. If
21 for any reason you disagree with the conditions or duration of your
22 return to work or the medical benefits or the temporary disability
23 compensation that has been provided, you ((may)) must protest in
24 writing to the department of labor and industries, self-insurance
25 section, within sixty days of the date you received this order." ((If
26 the department receives such a protest, the self-insurer's closure
27 order shall be held in abeyance. The department shall review the claim
28 closure action and enter a determinative order as provided for in RCW
29 51.52.050.

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

37 (8)(a) If a claim ((+a)) (i) is accepted by a self-insurer after
38 June 30, 1990, ((+b)) and before August 1, 1997, (ii) involves only
39 medical treatment, ((+c)) (iii) does not involve payment of temporary

1 disability compensation under RCW 51.32.090, and ~~((d))~~ (iv) at the
2 time medical treatment is concluded does not involve permanent
3 disability, the claim may be closed by the self-insurer, subject to
4 reporting of claims to the department in a manner prescribed by
5 department rules adopted under chapter 34.05 RCW. Upon closure of a
6 claim, the self-insurer shall enter a written order, communicated to
7 the worker, which contains the following statement clearly set forth in
8 bold-face type: "This order constitutes notification that your claim
9 is being closed with medical benefits only, as provided. If for any
10 reason you disagree with this closure, you ~~((may))~~ must protest in
11 writing to the Department of Labor and Industries, Olympia, within 60
12 days of the date you received this order. The department will then
13 review your claim and enter a further determinative order." ~~((If the
14 department receives such a protest, it shall review the claim and enter
15 a further determinative order as provided for in RCW 51.52.050.))~~

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

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

36 (b) If a physician submits a report to the self-insurer that
37 concludes that the worker's condition is fixed and stable and supports
38 payment of a permanent partial disability award, and if within fourteen
39 days from the date the self-insurer mailed the report to the attending

1 or treating physician, the worker's attending or treating physician
2 disagrees in writing that the worker's condition is fixed and stable,
3 the self-insurer must get a supplemental medical opinion from a
4 provider on the department's approved examiner's list before closing
5 the claim. In the alternative, the self-insurer may forward the claim
6 to the department, which must review the claim and enter a final order
7 as provided for in RCW 51.52.050.

8 (c) Upon closure of a claim under this subsection (9), 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 such medical benefits
13 and temporary disability compensation as provided to date and with such
14 award for permanent partial disability, if any, as set forth below, and
15 with the condition that you have returned to work with the self-insured
16 employer. If for any reason you disagree with the conditions or
17 duration of your return to work or the medical benefits, temporary
18 disability compensation provided, or permanent partial disability that
19 has been awarded, you must protest in writing to the Department of
20 Labor and Industries, Self-Insurance Section, within sixty days of the
21 date you received this order. If you do not protest this order to the
22 department, this order will become final."

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

28 (10) If the department receives a protest of an order issued by a
29 self-insurer under subsections (7) through (9) of this section, the
30 self-insurer's closure order must be held in abeyance. The department
31 shall review the claim closure action and enter a further determinative
32 order as provided for in RCW 51.52.050. If no protest is timely filed,
33 the closing order issued by the self-insurer shall become final and
34 shall have the same force and effect as a department order that has
35 become final under RCW 51.52.050.

36 (11) If within two years of claim closure under subsections (7)
37 through (9) of this section, the department determines that the self-
38 insurer has made payment of benefits because of clerical error, mistake
39 of identity, or innocent misrepresentation or the department discovers

1 a violation of the conditions of claim closure, the department may
2 require the self-insurer to correct the benefits paid or payable. This
3 subsection (11) does not limit in any way the application of RCW
4 51.32.240.

5 (12) For the purposes of this section, "comparable wages and
6 benefits" means wages and benefits that are at least ninety-five
7 percent of the wages and benefits received by the worker at the time of
8 injury.

9 NEW SECTION. Sec. 2. The department of labor and industries shall
10 review the permanent partial disability claims closure activity by
11 self-insured employers authorized under RCW 51.32.055(9) through at
12 least June 30, 1999. The department must also review the claims
13 closure activity by the self-insured section of the department for the
14 same period. The review of these activities must include the number
15 and types of claims closed, protested, reconsidered, and appealed, and
16 the results of such activities, including the results of injured worker
17 satisfaction surveys conducted by the department. The department must
18 report on its review to the appropriate committees of the legislature
19 no later than January 1, 2000.

Passed the House April 21, 1997.

Passed the Senate April 10, 1997.

Approved by the Governor May 19, 1997.

Filed in Office of Secretary of State May 19, 1997.