

# SENATE BILL REPORT

## SB 6302

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As Reported by Senate Committee On:  
Labor, Commerce & Consumer Protection, February 2, 2012

**Title:** An act relating to claim files and compensation under the industrial insurance laws.

**Brief Description:** Addressing claim files and compensation under the industrial insurance laws.

**Sponsors:** Senators Kohl-Welles, Conway, Keiser, Kline, Pridemore and Chase.

**Brief History:**

**Committee Activity:** Labor, Commerce & Consumer Protection: 1/30/12, 2/02/12 [DPS, DNP].

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### SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

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**Majority Report:** That Substitute Senate Bill No. 6302 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Keiser and Kline.

**Minority Report:** Do not pass.

Signed by Senators Holmquist Newbry, Ranking Minority Member; King, Assistant Ranking Minority Member; Hewitt.

**Staff:** Mac Nicholson (786-7445)

**Background:** Workers who, in the course of employment, are injured or disabled from an occupational disease are entitled to benefits. Depending on the disability, workers are entitled to medical, temporary time-loss, and vocational rehabilitation benefits, as well as benefits for permanent disabilities. Under the state's industrial insurance laws, employers must insure through the state fund administered by the Department of Labor and Industries (L&I) or employers may self-insure if qualified. Self-insured employers commonly contract with a third-party administrator to administer workers' compensation claims.

Information in the claim files and records of injured workers is confidential and not open to public inspection. With some limitation, L&I, injured workers, employers, and medical providers have access to claim files and records.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Certain injured workers can resolve their industrial insurance claims through claims resolution structured settlements agreements. Claims closed pursuant to a structured settlement agreement can be reopened for medical treatment only, and further temporary total, temporary partial, permanent partial, or permanent total benefits are not payable. The Board of Industrial Insurance Appeals (BIIA) must approve all settlement agreements. Unrepresented workers must have a conference with an industrial appeals judge to determine whether the agreement is in the worker's best interest before submitting the agreement to BIIA.

BIIA may award reasonable attorney fees and costs under specified circumstances, including cases where BIIA reverses or modifies a L&I order or decision and additional relief is granted to a worker. For claim resolution structured settlement agreements, attorney's fees are limited to 15 percent of the total amount to be paid to the worker.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Recommended Substitute):** Information submitted to the BIIA or to L&I pursuant to the negotiation and approval of a settlement agreement, and information developed during conferences or hearings on settlement agreements is confidential and not open to public inspection. L&I, injured workers, employers, and medical providers have access to this information subject to the same conditions that exist for information in claim files and records.

L&I must provide the appropriate committees of the Legislature with a plan to define claim file for state fund and self-insured claims. The plan must include a timeline for gathering stakeholder input, and for adopting rules or submitting recommended statutory language.

BIIA must award reasonable attorney fees and costs to a worker who re-opens a claim previously resolved with a structured settlement agreement if L&I initially issued an order denying the re-opening and BIIA reverses or modifies L&I's order and fully or partially awards the relief sought by the worker. In self-insured cases, the fees and costs are paid by the self-insured employer, and in state fund cases the fees and costs are paid by L&I.

**EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Substitute as Passed Committee):** The substitute removes definitional sections that were contained in the substitute that was heard in committee, and re-organizes the language regarding the confidentiality of information submitted or development pursuant to settlement agreements.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 2, 2012.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony as Heard in Committee:** PRO: This legislation is about transparency and accountability in the workers comp system and will help workers understand their rights and responsibilities. The privacy piece is important as a worker should be able to share all the information necessary to make a best interest determination and that sensitive information should be private. The attorney fee piece is important because on a medical reopening of a settlement, there are no other benefits available from which the worker could pay attorney fees and expenses. The cost for medical testimony is astronomical, and attorneys won't represent them in doing so because there's nothing from which an attorney can collect contingent fees. The ability to reopen a settlement for future medical is illusory if workers can't get a mechanism to pay an attorney and medical costs. Workers must have access to medical treatment they need in the future. Workers need to have a definition of claim file so they can get all the files they need related to their case.

CON: There's no need for definitions in the bill. The disclosure piece has been a point of discussion with differing views about how much should be disclosed. Enough information has to be available to the employer to manage the claim going forward if the claim is reopened. Also enough information has to be available to put the settlement into the claims registry. A claim file is best defined in rule. The attorney fee piece is premature. L&I makes the re-opening determination, and the standards for doing so are very liberal. This should be discussed during the interim.

OTHER: The confidentiality issue arose during the rule making process by the BIIA and L&I and should be addressed. The BIIA has determined information submitted in the settlement conferences would be public, and that the information could contain personal and confidential information submitted by workers to determine whether the settlement is in their best interest. Regarding the attorney fee piece, L&I anticipates about 25 cases would be subject to the fees for reopening at a cost of about \$300,000 per year.

**Persons Testifying:** PRO: Rebecca Johnson, WA State Labor Council; Kathy Comfort, WA State Assn. for Justice; Nicole Grant, International Brotherhood of Electrical Workers, Certified Electrical Workers; Sean O'Sullivan, Assn. of Western Pulp & Paper Workers.

CON: Kathleen Collins, WA Self-Insurers Assoc.

OTHER: Vickie Kennedy, L&I.