CERTIFICATION OF ENROLLMENT

SENATE BILL 6522

Chapter 142, Laws of 2014

63rd Legislature
2014 Regular Session

PUBLIC RECORDS--EXEMPTION--INDUSTRIAL INSURANCE SETTLEMENT NEGOTIATIONS

EFFECTIVE DATE: 06/12/14

Passed by the Senate February 12, 2014
YEAS 48  NAYS 0

BRAD OWEN
President of the Senate

Passed by the House March 6, 2014
YEAS 97  NAYS 0

FRANK CHOPP
Speaker of the House of Representatives

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is SENATE BILL 6522 as passed by the Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN
Secretary

Approved March 28, 2014, 3:08 p.m.

JAY INSLEE
Governor of the State of Washington

FILED
March 31, 2014

SECRETARY OF STATE
State of Washington
AN ACT Relating to restricting the use of personal information
gathered during the claims resolution structured settlement agreement
process; amending RCW 51.04.063; and reenacting and amending RCW
42.56.230.

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

Sec. 1. RCW 42.56.230 and 2013 c 336 s 3 and 2013 c 220 s 1 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 early learning; or

(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.
(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 account 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; ((and))

(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; and

(8) All information related to individual claims 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.

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.

Sec. 2. RCW 51.04.063 and 2013 c 23 s 104 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 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 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 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 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 claims 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.

(14) Information gathered during the claims resolution structured settlement agreement process, including but not limited to forms filled out by the parties and testimony during a claims 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.

Passed by the Senate February 12, 2014.
Passed by the House March 6, 2014.
Approved by the Governor March 28, 2014.
Filed in Office of Secretary of State March 31, 2014.