

# HOUSE BILL REPORT

## ESSB 5515

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As Passed House

April 9, 1993

**Title:** An act relating to employee rights regarding industrial insurance claims.

**Brief Description:** Changing provisions relating to industrial insurance claims.

**Sponsors:** Senate Committee on Labor & Commerce (originally sponsored by Senators Prentice and Sutherland).

**Brief History:**

Reported by House Committee on:

Commerce & Labor, March 31, 1993, DP;

Passed House, April 9, 1993, 98-0.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass. Signed by 6 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Conway; King; Springer; and Veloria.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Lisk, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; and Horn.

**Staff:** Chris Cordes (786-7117).

**Background:** Qualifying employers are allowed to self-insure their Workers' Compensation programs. Self-insurers provide for administration of their injured workers' claims, under regulation by the Department of Labor and Industries.

In an industrial insurance appeal to Superior Court, the injured worker's attorneys' fees and costs are paid by the department if a decision of the Board of Industrial Insurance Appeals is reversed or modified and the accident fund is affected by the litigation. In self-insurer cases, the employer must pay the attorneys' fees and costs if the board's decision is reversed or modified and additional benefits are ordered that would have been paid from the accident fund in state fund cases. The worker's litigation costs are not paid when the worker successfully defends a favorable board decision on appeal to the courts.

**Summary of Bill:** The authority of the court to fix reasonable attorneys' fees for the worker's or beneficiary's attorney applies to both Superior and appellate courts.

The requirement for the worker's or beneficiary's attorneys' fees and costs fixed by the court to be paid out of the Department of Labor and Industries' administrative fund when the litigation affects the accident fund is made applicable also to litigation affecting the medical aid fund. The fees and costs fixed by the court are also paid from the administrative fund if, in an appeal by the department or the employer, the worker's or beneficiary's right to relief is sustained, or in an appeal by the worker involving a state fund employer with 25 or fewer employees in which the department does not participate, the board order in favor of the employer is sustained. The requirement for self-insured employers to pay the fees and costs fixed by the court is amended to delete the requirement that the litigation would have been paid from the accident fund had the employer not been self-insured.

A self-insured employer is required to provide a free copy of the employee's claim file or requested portions of the file within 15 days of a request by the employee or employee's representative, if release of the file is permitted under statutes authorizing access to claim files. If the employer finds that release of the file is not in the worker's best interest, the employer must submit a request for denial with an explanation and the file copy. A reasonable charge may be made for second or subsequent requests. New material added to the file after the initial request must be provided under the same terms as the initial request.

A self-insured employer must notify the department of any employee protest relating to an industrial insurance claim within five working days. A medical report must be submitted by a self-insured employer with each request for closure of an industrial insurance claim.

A self-insured employer must request allowance or denial of a claim within 60 days of the date the claim is filed. If the self-insurer fails to act within 60 days, the department is directed to promptly intervene and adjudicate the claim.

Failure of a self-insurer to comply with the requirements for providing the claim file, submitting notice of protests, and requesting allowance or denial of claims subjects the self-insurer to a penalty, not to exceed \$500, that the department will collect for the benefit of the worker.

**Fiscal Note:** Available. New fiscal note requested on engrossed bill March 30, 1993.

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

**Testimony For:** Part of the bill addresses an inequity in the payment of workers' attorneys' fees when the worker is defending an award on appeal. A similar concern has been raised about small employers who are often forced into litigation by an employee appeal. An amendment to the bill addresses this concern.

**Testimony Against:** None.

**Witnesses:** Wayne Lieb, Washington State Trial Lawyers Association.