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**SUBSTITUTE SENATE BILL 5515**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

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

Read first time 03/03/93.

1 AN ACT Relating to employee rights regarding industrial insurance  
2 claims; amending RCW 51.52.130; adding a new section to chapter 51.52  
3 RCW; adding new sections to chapter 51.14 RCW; and prescribing  
4 penalties.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.52 RCW  
7 to read as follows:

8 Upon appeal of a worker's claim to the board of industrial  
9 insurance appeals, ex parte contact between a representative of the  
10 department, self-insured employer, or employer, and a treating or  
11 consulting physician of the worker is prohibited on matters relating to  
12 the specific issues appealed and subject to the jurisdiction of the  
13 board unless prior notice of such contact is provided to the worker or  
14 the worker's representative and the contact is conducted under  
15 applicable civil rules of discovery.

16 **Sec. 2.** RCW 51.52.130 and 1982 c 63 s 23 are each amended to read  
17 as follows:

1 If, on appeal to the superior or appellate court from the decision  
2 and order of the board, said decision and order is reversed or modified  
3 and additional relief is granted to a worker or beneficiary, or in  
4 cases where a party other than the worker or beneficiary is the  
5 appealing party and the worker's or beneficiary's right to relief is  
6 sustained (~~by the court~~), a reasonable fee for the services of the  
7 worker's or beneficiary's attorney shall be fixed by the court. In  
8 fixing the fee the court shall take into consideration the fee or fees,  
9 if any, fixed by the director and the board for such attorney's  
10 services before the department and the board. If the court finds that  
11 the fee fixed by the director or by the board is inadequate for  
12 services performed before the department or board, or if the director  
13 or the board has fixed no fee for such services, then the court shall  
14 fix a fee for the attorney's services before the department, or the  
15 board, as the case may be, in addition to the fee fixed for the  
16 services in the court. If in a worker or beneficiary appeal the  
17 decision and order of the board is reversed (~~or modified and if the~~  
18 ~~accident fund is affected by the litigation then~~) or if in an appeal  
19 by the department or employer the worker or beneficiary's right to  
20 relief is sustained, the attorney's fee fixed by the court, for  
21 services before the court only, and the fees of medical and other  
22 witnesses and (~~the costs~~) reasonable expenses shall be payable out of  
23 the administrative fund of the department. In the case of self-insured  
24 employers, (~~if the decision and order of the board is reversed or~~  
25 ~~modified resulting in additional benefits by the litigation that would~~  
26 ~~be paid from the accident fund if the employer were not self-insured,~~  
27 ~~then~~) the attorney fees fixed by the court, for services before the  
28 court(~~(-)~~) only, and the fees of medical and other witnesses and (~~the~~  
29 ~~costs~~) reasonable expenses shall be payable directly by the self-  
30 insured employer.

31 NEW SECTION. Sec. 3. (1) The self-insurer shall provide, when  
32 authorized under RCW 51.28.070, a copy of the employee's claim file at  
33 no cost within fifteen days of receipt of a request by the employee or  
34 the employee's representative. In the case of second or subsequent  
35 requests, a reasonable charge for copying may be made. The self-  
36 insurer shall provide the entire contents of the claim file unless the  
37 request is for only a particular portion of the file. Any new material

1 added to the claim file after the initial request shall be provided  
2 under the same terms and conditions as the initial request.

3 (2) The self-insurer shall transmit notice to the department of any  
4 protest or appeal by an employee relating to the administration of an  
5 industrial injury or occupational disease claim under this chapter  
6 within five working days of receipt. The date that the protest or  
7 appeal is received by the self-insurer shall be deemed to be the date  
8 the protest is received by the department for the purpose of RCW  
9 51.52.050.

10 (3) The self-insurer shall submit a medical report with the request  
11 for closure of a claim under this chapter.

12 NEW SECTION. **Sec. 4.** The self-insurer shall request allowance or  
13 denial of a claim within sixty days from the date that the claim is  
14 filed, or the claim shall be deemed allowed. A self-insurer may  
15 request, for good cause, an extension of the deadline for an additional  
16 thirty days, if written notice of the extension is provided to the  
17 employee within forty-five days from the date the claim is filed. If  
18 further extension is required, a self-insurer must make the request  
19 within sixty days of the date the claim is filed and provide written  
20 notice to the employee at the time the request is made. The request  
21 must include a statement of reasons why the injury, occupational  
22 disease, or other facts and circumstances which determine denial or  
23 allowance of the claim, are so complex or unique as to require the  
24 additional time requested. The request must be accompanied by such  
25 supporting affidavits of health care providers, investigators, or  
26 others that can support the request.

27 NEW SECTION. **Sec. 5.** Failure of a self-insurer to comply with  
28 sections 3 and 4 of this act shall subject the self-insurer to a  
29 penalty under RCW 51.48.080, which shall accrue for the benefit of the  
30 employee. The director shall issue an order conforming with RCW  
31 51.52.050 determining whether a violation has occurred within thirty  
32 days of a request by an employee.

33 NEW SECTION. **Sec. 6.** Sections 3 through 5 of this act are each  
34 added to chapter 51.14 RCW.

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