

HOUSE BILL REPORT

HB 1596

As Reported By House Committee On:

Commerce & Labor

Title: An act relating to the authority of the department of labor and industries to hold industrial insurance orders in abeyance.

Brief Description: Revising the provision authorizing the department of labor and industries to hold industrial insurance orders in abeyance.

Sponsors: Representatives Romero, Cody, Conway and Cole.

Brief History:

Committee Activity:

Commerce & Labor: 2/27/95, 3/1/95 [DPS].

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Lisk, Chairman; Hargrove, Vice Chairman; Thompson, Vice Chairman; Cairnes; Fuhrman; Goldsmith and Horn.

Minority Report: Do not pass. Signed by 4 members: Representatives Romero, Ranking Minority Member; Conway, Assistant Ranking Minority Member; Cody and Cole.

Staff: Chris Cordes (786-7117).

Background: Workers, employers, and other parties aggrieved by Department of Labor and Industries' industrial insurance orders are entitled to request reconsideration of an order before appealing to the Board of Industrial Insurance Appeals. If the Department of Labor and Industries acts within certain time limits, the department may, on its own motion, hold an industrial insurance order in abeyance for up to 90 days to reconsider the order. For good cause, the department may extend the time period for an additional 90 days.

If the worker has filed an application to reopen a claim, the department must issue an order denying the application within 90 days of receiving the application. If the order is not issued within the time period, the application is deemed granted. This 90 day period may be extended 60 days for good cause.

In 1993, the Washington Supreme Court determined that these two time periods operate independently. In the case before the court, the department had issued an order denying an application to reopen a claim and had then placed the order in abeyance. The court held that once the department has issued an order denying a reopening application within the statutory time period, the time limits for making the initial decision on the application are satisfied. The department may then exercise its authority to hold the order in abeyance for reconsideration for up to 180 days.

Summary of Substitute Bill: The Department of Labor and Industries' authority to reconsider an industrial insurance order for up to 180 days after the order is placed in abeyance is modified. If the order concerns an application to reopen a claim, the time period for reconsideration may not exceed 90 days from the date that the application was received. The department may extend this period for an additional 60 days for good cause. However, if the worker is employed by a self-insurer, the department may not exercise its authority to hold an application for reopening a claim in abeyance until the department has notified the self-insurer and sent a copy of the application. The notice and application copy must be sent within 10 days of receiving the application. The time period for ordering abeyance begins running when the self-insurer receives the notice and application. Good cause for extending the 90 day time period includes delay that results from the worker's failure to cooperate with treatment or a medical examination.

Reopening applications that are deemed granted by statute may not be held in abeyance.

Technical changes are also made to clarify and reorganize the statute.

Substitute Bill Compared to Original Bill: The substitute bill limits the authority of the Department of Labor and Industries to hold an application for reopening an industrial insurance claim in abeyance if the worker is employed by a self-insurer; the department must first notify the self-insurer and send a copy of the application within 10 days of receiving the application. The time period for ordering abeyance begins running when the self-insurer receives the notice and application. A provision is added that good cause for extending the 90 day time period includes delay that results from the worker's failure to cooperate with treatment or a medical examination.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: In the case before the court, the Department of Labor and Industries used nearly all of the time period to exercise its authority to hold an order in abeyance. This resulted in unjust delays to the worker. This bill is needed to expedite the process of reopening claims.

Testimony Against: It is not fair to a self-insured employer if the department fails to notify the employer of the reopening application. The self-insurer would have no time to review the claim before the time period elapsed. The statute must be carefully amended since the two time periods in conflict are both intended to help injured workers. The parties should be given an opportunity to suggest language that will make the statute work for the benefit of all sides.

Testified: (In favor) Jeff Johnson, Washington State Labor Council. (With concerns) Melanie Stewart, Washington Self-Insurers Association; and Clif Finch, Association of Washington Business.