

HOUSE BILL REPORT

HB 3139

As Reported by House Committee On:

Commerce & Labor

Appropriations

Title: An act relating to industrial insurance benefits on appeal.

Brief Description: Providing for stays of industrial insurance orders on appeal.

Sponsors: Representatives Conway, Wood, Green, Moeller, Simpson and Ormsby.

Brief History:

Committee Activity:

Commerce & Labor: 2/1/08, 2/5/08 [DPS];

Appropriations: 2/11/08 [DP2S(w/o sub CL)].

Brief Summary of Second Substitute Bill

- Provides that an order awarding industrial insurance benefits becomes due on the date issued unless the Board of Industrial Insurance Appeals orders a stay.
- Provides procedures for motions to stay.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Crouse.

Staff: Joan Elgee (786-7106).

Background:

Under the Industrial Insurance Act (Act), employers must either insure with the state fund managed by the Department of Labor and Industries (Department) or may self-insure if the employer meets certain criteria. The Act permits employers or workers to contest orders

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issued by the Department. Aggrieved parties may appeal directly to the Board of Industrial Insurance Appeals (Board) or may first request reconsideration by the Department. Upon filing of a notice of appeal, the Department must transmit the record to the Board. If the Board does not deny the appeal or allow the relief requested based on the record, the appeal is granted and the appeal proceeds.

The Act allows the Department to adopt policies regarding payment of benefits pending appeal. The Department's written policy, which applies to employers insured with the state fund, states that time-loss benefits are not paid while an employer's appeal is pending unless the issue does not involve the payment of time-loss benefits or the allowance or reopening of the claim, or unless the employer's appeal is unfounded. The Department's policy states that it is intended to avoid unnecessary recoupment costs when an employer prevails.

If a worker is overpaid benefits, the worker must repay the benefits and recoupment may be made from future payments. The Director of the Department may waive all or part of the payments where recovery would be against equity and good conscience.

Summary of Substitute Bill:

An order awarding industrial insurance benefits becomes due on the date issued and may not be stayed unless the Board orders a stay. Procedures are established for motions to stay.

A motion for a stay must be filed within 15 days of an order granting an appeal. The Board must conduct an expedited review of the claim file as it existed on the date of the Department order. Within 25 days of the filing of the motion or the order granting appeal, whichever is later, the Board must issue a decision. The Board must grant a motion to stay if the person seeking the stay demonstrates that it is more likely than not to prevail on the facts as they existed at the time of the order. The Board must not consider the likelihood of recoupment of benefits as a basis to grant or deny a stay.

If the Department has ordered an increase in a permanent partial disability award upon reconsideration, only the increase in the award is stayed pending a final decision on the merits. If a self-insured employer appeals an order setting a time-loss rate, only the payment of time-loss or pension benefits at the increased rate is stayed pending a final decision on the merits.

Substitute Bill Compared to Original Bill:

The substitute bill removes the presumption that the Department's order was correct. In addition, it eliminates the time frame for the Board to conduct a review of the claim file and changes the time frame to issue a decision to 25 days after the filing of the motion for stay or order granting appeal, whichever is later (the original bill stated 40 days after the filing of the motion). The substitute bill also provides that the new provisions apply to orders issued on or after the effective date of the act.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) This bill safeguards the delivery of benefits while protecting the employer's right to a quick review. The bill is fair to both workers and employers. Employers can keep appealing and workers don't receive benefits. A delay in benefits can complicate medical treatment. This bill covers medical and time-loss benefits.

There is a disparity between the state fund and self-insured claims because injured workers in the state fund can get time-loss benefits. Self-insured employers are not required to pay benefits until the final decision, even after the Department determines the worker is entitled to benefits. Self-insurers should either pay or seek a stay.

(Neutral) An amendment would make clear it is not a full hearing, which is more expensive and that the stay would be based on information from the Department.

As a matter of principle, workers should get benefits. Also, cases should be resolved quickly for the benefit of all parties.

The inclusion of medical benefits raises issues. Should it be all medical or just conservative treatment or treatment for life-threatening conditions? If there is an overpayment order, it would be against the provider.

There is also concern about large overpayments.

(Opposed) Increased costs will negatively impact the ability to be competitive as other state's industrial insurance rates are lower. This is another cost management issue for self-insurers. It takes an average of nine months before a final decision, which could mean \$36,000 in time-loss benefits. Self-insurers make careful decisions on whether to appeal and the employer prevails in 61 percent of the cases, indicating the Department was not correct. This bill hurts good employers.

There are concerns for both state fund and self insured employers. The standard for a stay is higher than the Superior Court standard, which is whether the case is debatable. The lack of due process is also a concern, as is the issue of whether the stay would be preserved if the case went to Superior Court.

Suggested amendments if the bill moves forward are to have the Department repay all monies expended if the employer prevails, eliminate the presumption, limit the provisions to time-loss, get Department help on overpayment orders, provide for no payments until the Board has granted a stay order, and allow another motion for a stay if the employee's action delays the appeal.

Recoupment is virtually impossible; employers must go to Superior Court.

There is no express statutory authority for the Department to pay benefits on appeal in state fund cases. Many other amendments would be needed.

Persons Testifying: (In support) Owen Linch, Teamsters JC-28; Jane Dickeson; Kevin Rojecki, Washington State Council of Firefighters; Karen Gude, United Food and Commercial Workers; and Michael Temple, Washington State Trial Lawyers Association.

(Neutral) Frank Fennerty and Tom Egan, Board of Industrial Insurance Appeals; and Vickie Kennedy, Department of Labor and Industries.

(Opposed) Dawn Yeager, Weyerhaeuser; Bernadette Pratt, Craig, Jessup and Stratton; Lori Hanson, Boeing; Kathleen Collins, Washington Self Insurer's Association; and Kris Tefft, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: (In support) Chris Vandyk, BYG Taxicab Cooperative.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Commerce & Labor. Signed by 21 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Cody, Conway, Darneille, Ericks, Fromhold, Grant, Green, Haigh, Hunt, Kagi, Kenney, Kessler, Linville, McIntire, Morrell, Pettigrew, Schual-Berke, Seaquist and Sullivan.

Minority Report: Do not pass. Signed by 11 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Chandler, Hinkle, Kretz, Priest, Ross, Schmick and Walsh.

Staff: Kirk Schmidt (786-7118).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Commerce & Labor:

The second substitute bill requires the Department of Labor and Industries (Department) to establish rules and procedures to collect information on self-insured claim overpayments, and to recoup self-insured overpayments from state fund claims and pay the self-insurer if recovery is made. It also authorizes the Department to provide overpayment information to a self-insurer when the worker is entitled to benefits from which the self-insurer can collect on behalf of the Department or another self-insurer.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed, except section 2, relating to rules and procedures to collect information on self-insured claim overpayments, which takes effect July 1, 2009.

Staff Summary of Public Testimony:

(In support) This bill will not allow benefits to be withheld due to employer appeal. The bill allows for the inclusion of medical and time loss benefits while an appeal is pending. Currently self insured employers are not required to pay medical and time loss benefits until after the appeal is decided.

(Opposed) This bill requires employers to pay benefits, including medical, while waiting appeal. Employers win appeal in 60 percent of cases. There are few options to recouping money paid while waiting appeal if the appeal is overturned.

Persons Testifying: (In support) Owen Lynch, Teamsters.

(Opposed) Kathleen Collins, Washington Self Insurers Association.

Persons Signed In To Testify But Not Testifying: None.