

HOUSE BILL REPORT

E2SHB 3139

As Amended by the Senate

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

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

Sponsors: By House Committee on Appropriations (originally sponsored by 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)].

Floor Activity:

Passed House: 2/18/08, 62-32.
Senate Amended.
Passed Senate: 3/7/08, 49-0.

Brief Summary of Engrossed 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.
- Requires the Department of Labor and Industries to establish procedures for self-insured employers to recoup overpayments from state fund claims.
- Requires the Department of Labor and Industries to study workers' compensation appeals and the impacts of the legislation.

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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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).

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).

Background:

Under the Industrial Insurance Act (Act), employers must 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 and workers on state fund and self-insured claims to contest orders regarding benefits. Aggrieved parties may appeal directly to the Board of Industrial Insurance Appeals (Board) or may first request reconsideration by the Department. When an appeal is filed, the Department transmits 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.

The Act provides procedures for recovery of overpaid benefits, or because of clerical error, innocent misrepresentation, or for other reasons. If benefits are overpaid, the recipient must repay the benefits and recoupment may be made from future payments due to the recipient on any claim with the state fund or self-insurer, as applicable. Recipients of benefits include workers and health service providers. Under some circumstances, the Director of the Department may waive all or part of the overpayments. If an order assessing an overpayment becomes final, the Department or self-insurer may obtain a judgment in superior court.

Summary of Engrossed Second Substitute Bill:

An order awarding industrial insurance benefits becomes effective and benefits due when the order is issued 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.

In certain types of appeals, payment of some benefits is stayed without further action by the Board. If the Department orders an increase in a permanent partial disability award upon reconsideration, the worker receives the amount reflected in the earlier order. If a party appeals an order establishing a worker's wages or the compensation rate for purposes of temporary or permanent total disability or loss of earning power benefits, the worker receives payment based on the wage or rate not in dispute. In these cases, payment of an increased award, or at a higher wage or rate, is stayed without further action by the Board pending a final decision on the merits.

Procedures are established for self-insured employers and the Department to recoup overpayments on all claims a worker may have, whether self-insured claims or state fund claims, when the overpayments result from a Board or court decision. The Department must establish procedures by rule to collect information concerning self-insured claim overpayments and to recoup the overpayments from state fund claims. The Department may also provide overpayment information to a self-insurer about benefits from which the self-insurer may collect all or part of the amount due on behalf of the Department or another self-insurer. If overpayments are collected in these cases, the self-insurer must pay the Department and the Department credits the amounts to the appropriate state funds or forwards the amounts to the other self-insurer.

Health service providers who provided treatment or services to a worker are not considered recipients of benefits from whom the Department or a self-insurer may recover overpayments resulting from a Board or court decision. The Department or self-insurer may recover overpayments from any entity that provided health insurance to the extent that entity would have provided health insurance benefits but for workers' compensation coverage.

The Department is directed to study appeals of workers' compensation cases and collect information on the impacts of the legislation on state fund and self-insured workers and employers. The study must consider the types of benefits that may be paid pending an appeal, and must include the frequency and outcomes of appeals, the number of and amount of overpayments resulting from decisions of the Board or court, and the processes used and efforts made to recoup overpayments and the results of those efforts. A report on preliminary results of the study is due to the Workers' Compensation Advisory Committee (Committee) by July 1, 2009. A final report on the results, including any recommendations, including any

recommendations, if necessary, for addressing unrecoverable overpayments, is due to the Committee and the appropriate committees of the Legislature by December 1, 2009.

The legislation applies to orders issued after the effective date of the act.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment strikes the bill as it passed the House except for the study. It also modifies the study to be consistent with the deletion of the other provisions and to make other changes. The Department of Labor and Industries (Department) must study appeals and collect information on the impacts on employees and employers of a requirement that employers pay benefits pending appeal. The Department must report to the Workers' Compensation Advisory Committee and the appropriate committees of the Legislature by December 1, 2008. By December 31, 2008, the Committee must provide recommendations. (The bill as it passed the House directed the Department to report to the Committee and the legislative committees, and to do so by December 1, 2009.) The amendment specifically requires recommendations for addressing payment of benefits pending employer appeals, any procedural or process changes to expedite the appeals process, the need for a permanent funding source to reimburse employer and state fund overpayment costs, and the method to fund such a source if needed. In addition, the amendment provides that the study must consider also consider the issues and duration of appeals.

Appropriation: None.

Fiscal Note: Available.

Effective Date: 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: (Commerce & Labor)

(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.

Staff Summary of Public Testimony: (Appropriations)

(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: (Commerce & Labor) (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 Testifying: (Appropriations) (In support) Owen Lynch, Teamsters.

(Opposed) Kathleen Collins, Washington Self Insurers Association.

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

Persons Signed In To Testify But Not Testifying: (Appropriations) None.