

# SENATE BILL REPORT

## SB 6373

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As of February 2, 2020

**Title:** An act relating to allowing self-insurers to accept certain industrial insurance claims.

**Brief Description:** Allowing self-insurers to accept certain industrial insurance claims.

**Sponsors:** Senators King, Braun and Schoesler.

**Brief History:**

**Committee Activity:** Labor & Commerce: 1/28/20.

**Brief Summary of Bill**

- Requires a self-insurer to issue an order allowing a workers' compensation claim within 60 days from the date that the claim is filed where the worker may be entitled to benefits, other than medical treatment only, and when the self-insurer has determined to allow the claim.
- Allows the Department of Labor and Industries (L&I) to adopt rules regarding the form of the order and an L&I interlocutory order allowing a self-insurer additional time to investigate the validity of a claim.

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### SENATE COMMITTEE ON LABOR & COMMERCE

**Staff:** Susan Jones (786-7404)

**Background:** Workers' Compensation Claims. Workers who, in the course of employment, are injured or disabled are entitled to industrial insurance/workers' compensation benefits, which may include medical, temporary time-loss, vocational rehabilitation benefits, and permanent disabilities benefits.

Claims to Self-Insurers. Generally, a self-insurer provides any and all appropriate benefits to the injured worker and manages the claims of its employees. Self-insurers receive claims from workers, make the initial decision to accept or deny the claim, and request L&I's approval. The self-insurer must request allowance or denial of a claim within 60 days from the date that the claim is filed. If the self-insurer fails to act within sixty days, L&I must promptly intervene and adjudicate the claim. L&I makes the official decision as an order.

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*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.*

Joint Legislative Audit & Review Committee Audit. In 2015, the Legislature directed the Joint Legislative Audit & Review Committee (JLARC) to conduct a performance audit of the workers' compensation claims management at L&I. JLARC hired a consulting firm with expertise evaluating workers' compensation programs to assist with the audit. The consultants' review focused largely on claims management between 2010 and 2013. Between 2010 and 2013, an average of 125,000 claims were accepted for compensation each year. Of these, L&I directly managed an average of 87,000 state fund claims and self-insurers managed another 38,000 claims with L&I oversight.

The JLARC report provided that the L&I approval step delays decisions and may not add value for acceptance decisions, known as allowance orders. The consultants reviewed a sample of 111 claims and found that L&I accepted 110 of the claims. The one exception involved a denial that was later overturned and accepted. JLARC reported that allowing self-insured employers to issue the formal decision when accepting claims could eliminate 30 to 45 days from the process for certain claims. JLARC recommended that the Legislature should allow self-insurers to issue formal orders when accepting claims, and L&I should incorporate a review of those orders in its audits of self-insurers.

**Summary of Bill:** Self-Insurers Issuing Order. For any workers' compensation claim where the worker may be entitled to benefits other than medical treatment only, when a self-insurer has determined to allow a claim, the self-insurer must issue an order allowing the claim to the injured worker, attending medical provider, and L&I within 60 days from the date that the claim is filed. The order of the self-insurer must be issued consistent with L&I rules.

Implementation Rules. L&I may adopt rules as necessary to implement the law related to self-insurers issuing orders, including the:

- form of orders allowing claims consistent with the standards followed by L&I ; and
- process for a self-insurer to request and obtain an interlocutory order from L&I allowing the self-insurer additional time to investigate the validity of a claim.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony:** PRO: This implements a simple recommendation of the 2015 JLARC study. This does no harm as the SI employer is going to allow the claim anyway. JLARC found that having to get L&I approval adds an average of 45 days to the process. L&I can intervene and adjudicate any complaints. The SI employer could segregate the claim under changes in current law that took effect on July 1, 2019. This allows the SI employer to issue an order approving the claim. It does not get into denials. This is consistent with the JLARC recommendation number 3. This is a good fix supported by a study. We put all this money into studies. It is about time we start listening to them.

CON: If the concern is the delay from the request for claim allowance and L&I's allowance, the fix is to allow the SI employers to start authorizing treatment when they request allowance. They do not need an order to do that and they are already paying time loss. The problem is there are no guard rails here. This does not prevent law firms from sneaking in language in the orders such as "this claim is allowed only for lumbar strain." That is segregation language and language of conditions that L&I should pass on. If that goes final, the worker is out of luck. The July 1st rules merely allows the employer to notify the working if they are accepting or segregating not orders that are binding.

**Persons Testifying:** PRO: Senator Curtis King, Prime Sponsor; Christine Brewer, Washington Self Insurers; Robert Battles, Association of Washington Business.

CON: Doug Palmer, Washington State Association for Justice.

**Persons Signed In To Testify But Not Testifying:** No one.