

CERTIFICATION OF ENROLLMENT

SENATE BILL 5046

Chapter 89, Laws of 2021

67th Legislature
2021 Regular Session

WORKERS' COMPENSATION CLAIM RESOLUTION SETTLEMENT AGREEMENTS—VARIOUS
PROVISIONS

EFFECTIVE DATE: April 16, 2021

Passed by the Senate February 10,
2021

Yeas 49 Nays 0

DENNY HECK

President of the Senate

Passed by the House April 5, 2021

Yeas 98 Nays 0

Laurie Jinkins

**Speaker of the House of
Representatives**

Approved April 16, 2021 10:44 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5046** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

April 16, 2021

**Secretary of State
State of Washington**

SENATE BILL 5046

Passed Legislature - 2021 Regular Session

State of Washington

67th Legislature

2021 Regular Session

By Senators Conway, Keiser, and King

Prefiled 12/30/20. Read first time 01/11/21. Referred to Committee on Labor, Commerce & Tribal Affairs.

1 AN ACT Relating to workers' compensation claim resolution
2 settlement agreements; amending RCW 51.04.062, 51.04.063, 51.04.065,
3 51.04.069, and 51.52.120; reenacting and amending RCW 42.56.230; and
4 declaring an emergency.

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

6 **Sec. 1.** RCW 42.56.230 and 2019 c 470 s 8, 2019 c 239 s 2, and
7 2019 c 213 s 2 are each reenacted and amended to read as follows:

8 The following personal information is exempt from public
9 inspection and copying under this chapter:

10 (1) Personal information in any files maintained for students in
11 public schools, patients or clients of public institutions or public
12 health agencies, or welfare recipients;

13 (2)(a) Personal information:

14 (i) For a child enrolled in licensed child care in any files
15 maintained by the department of children, youth, and families;

16 (ii) For a child enrolled in a public or nonprofit program
17 serving or pertaining to children, adolescents, or students,
18 including but not limited to early learning or child care services,
19 parks and recreation programs, youth development programs, and after-
20 school programs;

1 (iii) For the family members or guardians of a child who is
2 subject to the exemption under this subsection (2) if the family
3 member or guardian has the same last name as the child or if the
4 family member or guardian resides at the same address as the child
5 and disclosure of the family member's or guardian's information would
6 result in disclosure of the personal information exempted under
7 (a)(i) and (ii) of this subsection; or

8 (iv) For substitute caregivers who are licensed or approved to
9 provide overnight care of children by the department of children,
10 youth, and families.

11 (b) Emergency contact information under this subsection (2) may
12 be provided to appropriate authorities and medical personnel for the
13 purpose of treating the individual during an emergency situation;

14 (3) Personal information in files maintained for employees,
15 appointees, or elected officials of any public agency to the extent
16 that disclosure would violate their right to privacy;

17 (4) Information required of any taxpayer in connection with the
18 assessment or collection of any tax if the disclosure of the
19 information to other persons would: (a) Be prohibited to such persons
20 by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance
21 authorized under RCW 35.102.145; or (b) violate the taxpayer's right
22 to privacy or result in unfair competitive disadvantage to the
23 taxpayer;

24 (5) Credit card numbers, debit card numbers, electronic check
25 numbers, card expiration dates, or bank or other financial
26 information as defined in RCW 9.35.005 including social security
27 numbers, except when disclosure is expressly required by or governed
28 by other law;

29 (6) Personal and financial information related to a small loan or
30 any system of authorizing a small loan in RCW 31.45.093;

31 (7)(a) Any record used to prove identity, age, residential
32 address, social security number, or other personal information
33 required to apply for a driver's license or identicard.

34 (b) Information provided under RCW 46.20.111 that indicates that
35 an applicant declined to register with the selective service system.

36 (c) Any record pertaining to a vehicle license plate, driver's
37 license, or identicard issued under RCW 46.08.066 that, alone or in
38 combination with any other records, may reveal the identity of an
39 individual, or reveal that an individual is or was, performing an
40 undercover or covert law enforcement, confidential public health

1 work, public assistance fraud, or child support investigative
2 activity. This exemption does not prevent the release of the total
3 number of vehicle license plates, drivers' licenses, or identicards
4 that, under RCW 46.08.066, an agency or department has applied for,
5 been issued, denied, returned, destroyed, lost, and reported for
6 misuse.

7 (d) Any record pertaining to a vessel registration issued under
8 RCW 88.02.330 that, alone or in combination with any other records,
9 may reveal the identity of an individual, or reveal that an
10 individual is or was, performing an undercover or covert law
11 enforcement activity. This exemption does not prevent the release of
12 the total number of vessel registrations that, under RCW 88.02.330,
13 an agency or department has applied for, been issued, denied,
14 returned, destroyed, lost, and reported for misuse.

15 Upon request by the legislature, the department of licensing
16 shall provide a report to the legislature containing all of the
17 information in (c) of this subsection (7) and this subsection (7)(d)
18 that is subject to public disclosure;

19 (8) All information related to individual claim((s)) resolution
20 ((structured)) settlement agreements submitted to the board of
21 industrial insurance appeals under RCW 51.04.063, other than final
22 orders from the board of industrial insurance appeals. The board of
23 industrial insurance appeals shall provide to the department of labor
24 and industries copies of all final claim resolution settlement
25 agreements;

26 ~~((Upon request by the legislature, the department of licensing~~
27 ~~shall provide a report to the legislature containing all of the~~
28 ~~information in subsection (7)(c) and (d) of this section that is~~
29 ~~subject to public disclosure;))~~

30 (9) Voluntarily submitted information contained in a database
31 that is part of or associated with enhanced 911 emergency
32 communications systems, or information contained or used in emergency
33 notification systems as provided under RCW 38.52.575 and 38.52.577;

34 (10) Until the person reaches eighteen years of age, information,
35 otherwise disclosable under chapter 29A.08 RCW, that relates to a
36 future voter, except for the purpose of processing and delivering
37 ballots;

38 (11) All information submitted by a person to the state, either
39 directly or through a state-licensed gambling establishment, or
40 Indian tribes, or tribal enterprises that own gambling operations or

1 facilities with class III gaming compacts, as part of the self-
2 exclusion program established in RCW 9.46.071 or 67.70.040 for people
3 with a gambling problem or gambling disorder; and

4 (12) Names, addresses, or other personal information of
5 individuals who participated in the bump-fire stock buy-back program
6 under RCW 43.43.920.

7 **Sec. 2.** RCW 51.04.062 and 2011 1st sp.s. c 37 s 301 are each
8 amended to read as follows:

9 The legislature finds that Washington state's workers'
10 compensation system should be designed to focus on achieving the best
11 outcomes for injured workers. Further, the legislature recognizes
12 that controlling pension costs is key to a financially sound workers'
13 compensation system for employers and workers. To these ends, the
14 legislature recognizes that certain workers would benefit from an
15 option that allows them to initiate claim resolution (~~(structured)~~)
16 settlements in order to pursue work or retirement goals independent
17 of the system, provided that sufficient protections for injured
18 workers are included.

19 **Sec. 3.** RCW 51.04.063 and 2014 c 142 s 2 are each amended to
20 read as follows:

21 (1) Notwithstanding RCW 51.04.060 or any other provision of this
22 title, (~~(beginning on January 1, 2012,)~~) an injured worker who is at
23 least (~~(fifty-five years of age on or after January 1, 2012, fifty-~~
24 ~~three years of age on or after January 1, 2015, or)~~) fifty years of
25 age (~~(on or after January 1, 2016,)~~) may choose from the following:
26 (a) To continue to receive all benefits for which they are eligible
27 under this title, (b) to participate in vocational training if
28 eligible, or (c) to initiate and agree to a resolution of their claim
29 with a (~~(structured)~~) claim resolution settlement.

30 (2)(a) As provided in this section, the parties to an allowed
31 claim may initiate and agree to resolve a claim with a (~~(structured)~~)
32 claim resolution settlement for all benefits other than medical.
33 Parties as defined in (b) of this subsection may only initiate claim
34 resolution (~~(structured)~~) settlements if at least one hundred eighty
35 days have passed since the claim was received by the department or
36 self-insurer and the order allowing the claim is final and binding.
37 All requirements of this title regarding entitlement to and payment
38 of benefits will apply during this period. All claim resolution

1 ((structured)) settlement agreements must be approved by the board of
2 industrial insurance appeals.

3 (b) For purposes of this section, "parties" means:

4 (i) For a state fund claim, the worker, the employer, and the
5 department. The employer will not be a party if the costs of the
6 claim or claims are no longer included in the calculation of the
7 employer's experience factor used to determine premiums, if they
8 cannot be located, are no longer in business, or they fail to respond
9 or decline to participate after timely notice of the claim resolution
10 settlement process provided by the board and the department.

11 (ii) For a self-insured claim, the worker and the employer.

12 (c) The claim resolution ((structured)) settlement agreements
13 shall:

14 (i) Bind the parties with regard to all aspects of a claim except
15 medical benefits unless revoked by one of the parties as provided in
16 subsection (6) of this section;

17 (ii) ((Provide)) At the option of the parties, either be paid out
18 in a single lump sum or be paid on a structured basis. If the parties
19 opt to have the settlement paid based on a structured basis, the
20 agreement shall provide a periodic payment schedule to the worker
21 equal to at least twenty-five percent but not more than one hundred
22 fifty percent of the average monthly wage in the state pursuant to
23 RCW 51.08.018, except for the initial payment which may be up to six
24 times the average monthly wage in the state pursuant to RCW
25 51.08.018;

26 (iii) Not set aside or reverse an allowance order;

27 (iv) Not subject any employer who is not a signatory to the
28 agreement to any responsibility or burden under any claim; and

29 (v) Not subject any funds covered under this title to any
30 responsibility or burden without prior approval from the director or
31 designee.

32 (d) For state fund claims, the department shall negotiate the
33 claim resolution ((structured)) settlement agreement with the worker
34 or their representative and with the employer or employers and their
35 representative or representatives.

36 (e) For self-insured claims, the self-insured employer shall
37 negotiate the agreement with the worker or his or her representative.
38 Workers of self-insured employers who are unrepresented may request
39 that the office of the ombuds for self-insured injured workers
40 provide assistance or be present during negotiations.

1 (f) Terms of the agreement may include the parties' agreement
2 that the claim shall remain open for future necessary medical or
3 surgical treatment related to the injury where there is a reasonable
4 expectation such treatment is necessary. The parties may also agree
5 that specific future treatment shall be provided without the
6 application required in RCW 51.32.160.

7 (g) Any claim resolution (~~(structured)~~) settlement agreement
8 entered into under this section must be in writing and signed by the
9 parties or their representatives and must clearly state that the
10 parties understand and agree to the terms of the agreement.

11 (h) If a worker is not represented by an attorney at the time of
12 signing a claim resolution (~~(structured)~~) settlement agreement, the
13 parties must forward a copy of the signed agreement to the board with
14 a request for a conference with an industrial appeals judge. The
15 industrial appeals judge must schedule a conference with all parties
16 within fourteen days for the purpose of (i) reviewing the terms of
17 the proposed settlement agreement by the parties; and (ii) ensuring
18 the worker has an understanding of the benefits generally available
19 under this title and that a claim resolution (~~(structured)~~)
20 settlement agreement may alter the benefits payable on the claim or
21 claims. The judge may schedule the initial conference for a later
22 date with the consent of the parties.

23 (i) Before approving the agreement, the industrial appeals judge
24 shall ensure the worker has an adequate understanding of the
25 agreement and its consequences to the worker.

26 (j) The industrial appeals judge may approve a claim resolution
27 (~~(structured)~~) settlement agreement only if the judge finds that the
28 agreement is in the best interest of the worker. When determining
29 whether the agreement is in the best interest of the worker, the
30 industrial appeals judge shall consider the following factors, taken
31 as a whole, with no individual factor being determinative:

32 (i) The nature and extent of the injuries and disabilities of the
33 worker;

34 (ii) The age and life expectancy of the injured worker;

35 (iii) Other benefits the injured worker is receiving or is
36 entitled to receive and the effect a claim resolution (~~(structured)~~)
37 settlement agreement might have on those benefits; and

38 (iv) The marital or domestic partnership status of the injured
39 worker.

1 (k) Within seven days after the conference, the industrial
2 appeals judge shall issue an order allowing or rejecting the claim
3 resolution ((structured)) settlement agreement. There is no appeal
4 from the industrial appeals judge's decision.

5 (l) If the industrial appeals judge issues an order allowing the
6 claim resolution ((structured)) settlement agreement, the order must
7 be submitted to the board.

8 (3) Upon receiving the agreement, the board shall approve it
9 within thirty working days of receipt unless it finds that:

10 (a) The parties have not entered into the agreement knowingly and
11 willingly;

12 (b) The agreement does not meet the requirements of a claim
13 resolution ((structured)) settlement agreement;

14 (c) The agreement is the result of a material misrepresentation
15 of law or fact;

16 (d) The agreement is the result of harassment or coercion; or

17 (e) The agreement is unreasonable as a matter of law.

18 (4) If a worker is represented by an attorney at the time of
19 signing a claim resolution ((structured)) settlement agreement, the
20 parties shall submit the agreement directly to the board without the
21 conference described in this section.

22 (5) If the board approves the agreement, it shall provide notice
23 to all parties. The department shall place the agreement in the
24 applicable claim file or files.

25 (6) A party may revoke consent to the claim resolution
26 ((structured)) settlement agreement by providing written notice to
27 the other parties and the board within thirty days after the date the
28 agreement is approved by the board.

29 (7) To the extent the worker is entitled to any benefits while a
30 claim resolution ((structured)) settlement agreement is being
31 negotiated or during the revocation period of an agreement, the
32 benefits must be paid pursuant to the requirements of this title
33 until the agreement becomes final.

34 (8) A claim resolution ((structured)) settlement agreement that
35 meets the conditions in this section and that has become final and
36 binding as provided in this section is binding on all parties to the
37 agreement as to its terms and the injuries and occupational diseases
38 to which the agreement applies. A claim resolution ((structured))
39 settlement agreement that has become final and binding is not subject
40 to appeal.

1 (9) All payments made to a worker pursuant to a final claim
2 resolution (~~(structured)~~) settlement agreement must be reported to
3 the department as claims costs pursuant to this title. If a self-
4 insured employer contracts with a third-party administrator for claim
5 services and the payment of benefits under this title, the third-
6 party administrator shall also disburse the (~~(structured)~~) claim
7 resolution settlement payments pursuant to the agreement.

8 (10) Claims closed pursuant to a claim resolution (~~(structured)~~)
9 settlement agreement can be reopened pursuant to RCW 51.32.160 for
10 medical treatment only. Further temporary total, temporary partial,
11 permanent partial, or permanent total benefits are not payable under
12 the same claim or claims for which a claim resolution (~~(structured)~~)
13 settlement agreement has been approved by the board and has become
14 final.

15 (11) Parties aggrieved by the failure of any other party to
16 comply with the terms of a claim resolution (~~(structured)~~) settlement
17 agreement have one year from the date of failure to comply to
18 petition to the board. If the board determines that a party has
19 failed to comply with an agreement, it will order compliance and will
20 impose a penalty payable to the aggrieved party of up to twenty-five
21 percent of the monetary amount unpaid at the time the petition for
22 noncompliance was filed. The board will also decide on any disputes
23 as to attorneys' fees for services related to claim resolution
24 (~~(structured)~~) settlement agreements.

25 (12) Parties and their representatives may not use settlement
26 offers or the claim resolution (~~(structured)~~) settlement agreement
27 process to harass or coerce any party. If the department determines
28 that an employer has engaged in a pattern of harassment or coercion,
29 the employer may be subject to penalty or corrective action, and may
30 be removed from the retrospective rating program or be decertified
31 from self-insurance under RCW 51.14.030.

32 (13) All information related to individual claim(~~(s)~~) resolution
33 (~~(structured)~~) settlement agreements submitted to the board of
34 industrial insurance appeals, other than final orders from the board
35 of industrial insurance appeals, is private and exempt from
36 disclosure under chapter 42.56 RCW. The board of industrial insurance
37 appeals shall provide to the department copies of all final claim
38 resolution settlement agreements.

39 (14) Information gathered during the claim(~~(s)~~) resolution
40 (~~(structured)~~) settlement agreement process, including but not

1 limited to forms filled out by the parties and testimony during a
2 claim(~~s~~) resolution (~~(structured)~~) settlement conference before the
3 board of industrial insurance appeals, is a statement made in the
4 course of compromise negotiations and is inadmissible in any future
5 litigation.

6 **Sec. 4.** RCW 51.04.065 and 2011 1st sp.s. c 37 s 303 are each
7 amended to read as follows:

8 The department must maintain copies of all claim resolution
9 (~~(structured)~~) settlement agreements entered into between the parties
10 and furnish copies of such agreements to any party actively
11 negotiating a subsequent claim resolution (~~(structured)~~) settlement
12 agreement with the worker on any allowed claim when requested. An
13 employer may not consider a prior agreement when making a decision
14 about hiring or the terms or conditions of employment.

15 **Sec. 5.** RCW 51.04.069 and 2011 1st sp.s. c 37 s 306 are each
16 amended to read as follows:

17 On December 1, 2011, and annually thereafter through December 1,
18 2014, the department shall report annually to the appropriate
19 committees of the legislature on the implementation of claim
20 resolution (~~(structured)~~) settlement agreements. In calendar years
21 2015, 2019, and 2023, the department shall contract for an
22 independent study of claim resolution (~~(structured)~~) settlement
23 agreements approved by the board under this section. The study must
24 be performed by a researcher with experience in workers' compensation
25 issues. When selecting the independent researcher, the department
26 shall consult with the workers' compensation advisory committee. The
27 study must evaluate the quality and effectiveness of (~~(structured)~~)
28 claim resolution settlement agreements of state fund and self-insured
29 claims, provide information on the impact of these agreements to the
30 state fund and to self-insured employers, and evaluate the outcomes
31 of workers who have resolved their claims through the claim
32 resolution (~~(structured)~~) settlement agreement process. The study
33 must be submitted to the appropriate committees of the legislature.

34 **Sec. 6.** RCW 51.52.120 and 2011 1st sp.s. c 37 s 304 are each
35 amended to read as follows:

36 (1) Except for claim resolution (~~(structured)~~) settlement
37 agreements, it shall be unlawful for an attorney engaged in the

1 representation of any worker or beneficiary to charge for services in
2 the department any fee in excess of a reasonable fee, of not more
3 than thirty percent of the increase in the award secured by the
4 attorney's services. Such reasonable fee shall be fixed by the
5 director or the director's designee for services performed by an
6 attorney for such worker or beneficiary, if written application
7 therefor is made by the attorney, worker, or beneficiary within one
8 year from the date the final decision and order of the department is
9 communicated to the party making the application.

10 (2) If, on appeal to the board, the order, decision, or award of
11 the department is reversed or modified and additional relief is
12 granted to a worker or beneficiary, or in cases where a party other
13 than the worker or beneficiary is the appealing party and the
14 worker's or beneficiary's right to relief is sustained by the board,
15 the board shall fix a reasonable fee for the services of his or her
16 attorney in proceedings before the board if written application
17 therefor is made by the attorney, worker, or beneficiary within one
18 year from the date the final decision and order of the board is
19 communicated to the party making the application. In fixing the
20 amount of such attorney's fee, the board shall take into
21 consideration the fee allowed, if any, by the director, for services
22 before the department, and the board may review the fee fixed by the
23 director. Any attorney's fee set by the department or the board may
24 be reviewed by the superior court upon application of such attorney,
25 worker, or beneficiary. The department or self-insured employer, as
26 the case may be, shall be served a copy of the application and shall
27 be entitled to appear and take part in the proceedings. Where the
28 board, pursuant to this section, fixes the attorney's fee, it shall
29 be unlawful for an attorney to charge or receive any fee for services
30 before the board in excess of that fee fixed by the board.

31 (3) For claim resolution (~~(structured)~~) settlement agreements,
32 fees for attorney services are limited to fifteen percent of the
33 total amount to be paid to the worker after the agreement becomes
34 final. The board will also decide on any disputes as to attorneys'
35 fees for services related to claim resolution (~~(structured)~~)
36 settlement agreements consistent with the procedures in subsection
37 (2) of this section.

38 (4) In an appeal to the board involving the presumption
39 established under RCW 51.32.185, the attorney's fee shall be payable
40 as set forth under RCW 51.32.185.

1 (5) Any person who violates this section is guilty of a
2 misdemeanor.

3 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of
5 the state government and its existing public institutions, and takes
6 effect immediately.

Passed by the Senate February 10, 2021.

Passed by the House April 5, 2021.

Approved by the Governor April 16, 2021.

Filed in Office of Secretary of State April 16, 2021.

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