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**SUBSTITUTE SENATE BILL 6427**

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**State of Washington**

**58th Legislature**

**2004 Regular Session**

**By** Senate Committee on Commerce & Trade (originally sponsored by Senator Honeyford)

READ FIRST TIME 02/05/04.

1 AN ACT Relating to attorneys' fees in industrial insurance matters;  
2 and amending RCW 51.52.132, 51.52.120, and 51.52.130.

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

4 **Sec. 1.** RCW 51.52.132 and 1965 ex.s. c 63 s 2 are each amended to  
5 read as follows:

6 ~~((Where the department, the board or the court, pursuant to RCW~~  
7 ~~51.52.120 or 51.52.130 fixes the attorney's fee, it shall be unlawful~~  
8 ~~for)) (1) An attorney ((to)) engaged in the representation of any  
9 worker or beneficiary may charge or receive ((any)) a fee ((in excess  
10 of that)) for services rendered in connection with securing benefits  
11 under this title that is twenty percent of the compensation awarded  
12 under chapter 51.32 RCW; or the amount fixed by the department, board,  
13 or the court under RCW 51.52.120; whichever is less. This fee  
14 requirement shall apply regardless of the number of forums in which the  
15 attorney has represented the worker or beneficiary.~~

16 (2) The department shall notify any worker or beneficiary  
17 represented by an attorney that the attorney's fee is restricted as  
18 provided in subsection (1) of this section.

1 (3) Any attorney entitled to a fee under this chapter shall be paid  
2 by the worker or beneficiary but only after the worker or beneficiary  
3 has received the total compensation to which he or she is entitled  
4 under chapter 51.32 RCW.

5 (4) Any person who violates any provision of this section ((shall  
6 be))):

7 (a) Is guilty of a misdemeanor; and

8 (b) From the date of conviction under (a) of this subsection, may  
9 not engage in the representation for a fee of a worker or beneficiary  
10 in connection with securing benefits under this title.

11 **Sec. 2.** RCW 51.52.120 and 2003 c 53 s 285 are each amended to read  
12 as follows:

13 ~~(1) ((It shall be unlawful for an attorney engaged in the~~  
14 ~~representation of any worker or beneficiary to charge for services in~~  
15 ~~the department any fee in excess of a reasonable fee, of not more than~~  
16 ~~thirty percent of the increase in the award secured by the attorney's~~  
17 ~~services. Such reasonable fee shall be fixed by))~~ For services  
18 rendered before the department in connection with securing benefits  
19 under this title, the director or the director's designee shall fix a  
20 reasonable fee, subject to RCW 51.52.132, for services performed by an  
21 attorney for ((such)) a worker or beneficiary, but only if ((written  
22 application therefor is made by the attorney, worker, or beneficiary))  
23 the attorney, worker, or beneficiary applies in writing within one year  
24 from the date the final decision and order of the department is  
25 communicated to the party making the application.

26 (2)(a) If, on appeal to the board, the order, decision, or award of  
27 the department is reversed or modified and additional relief is granted  
28 to a worker or beneficiary, or in cases where a party other than the  
29 worker or beneficiary is the appealing party and the worker's or  
30 beneficiary's right to relief is sustained by the board, the board  
31 shall fix a reasonable fee, subject to RCW 51.52.132, for the services  
32 of ((his or her)) the worker's or beneficiary's attorney in proceedings  
33 before the board but only if ((written application therefor is made by  
34 the attorney, worker, or beneficiary)) the attorney, worker, or  
35 beneficiary applies in writing within one year from the date the final  
36 decision and order of the board is communicated to the party making the  
37 application.

1        (b) In fixing the ((amount of such attorney's)) fee, the board  
2 shall take into consideration the fee ((allowed)), if any, fixed by the  
3 director or the director's designee, for the attorney's services before  
4 the department, and the board may review the fee fixed by the director  
5 or the director's designee.

6        (3)(a) If, on appeal to the superior or appellate court from the  
7 decision and order of the board, the decision and order is reversed or  
8 modified and additional relief is granted to a worker or beneficiary,  
9 or in cases where a party other than the worker or beneficiary is the  
10 appealing party and the worker's or beneficiary's right to relief is  
11 sustained, the court shall fix a reasonable fee, subject to RCW  
12 51.52.132, for the services before the court of the worker's or  
13 beneficiary's attorney.

14        (b) In fixing the fee, the court shall take into consideration the  
15 fee or fees, if any, fixed by the director or the director's designee  
16 or the board for the attorney's services before the department and the  
17 board under subsections (1) and (2) of this section.

18        (4) Any attorney's fee ((set)) fixed by the ((department)) director  
19 or the director's designee or the board may be reviewed by the superior  
20 court upon application of such attorney, worker, or beneficiary. The  
21 department or self-insured employer, as the case may be, shall be  
22 served a copy of the application and shall be entitled to appear and  
23 take part in the proceedings. ((Where the board, pursuant to this  
24 section, fixes the attorney's fee, it shall be unlawful for an attorney  
25 to charge or receive any fee for services before the board in excess of  
26 that fee fixed by the board.

27        ~~(3) Any person who violates this section is guilty of a~~  
28 ~~misdemeanor.)~~

29        **Sec. 3.** RCW 51.52.130 and 1993 c 122 s 1 are each amended to read  
30 as follows:

31        ~~((If, on appeal to the superior or appellate court from the~~  
32 ~~decision and order of the board, said decision and order is reversed or~~  
33 ~~modified and additional relief is granted to a worker or beneficiary,~~  
34 ~~or in cases where a party other than the worker or beneficiary is the~~  
35 ~~appealing party and the worker's or beneficiary's right to relief is~~  
36 ~~sustained, a reasonable fee for the services of the worker's or~~  
37 ~~beneficiary's attorney shall be fixed by the court. In fixing the fee~~

1 ~~the court shall take into consideration the fee or fees, if any, fixed~~  
2 ~~by the director and the board for such attorney's services before the~~  
3 ~~department and the board. If the court finds that the fee fixed by the~~  
4 ~~director or by the board is inadequate for services performed before~~  
5 ~~the department or board, or if the director or the board has fixed no~~  
6 ~~fee for such services, then the court shall fix a fee for the~~  
7 ~~attorney's services before the department, or the board, as the case~~  
8 ~~may be, in addition to the fee fixed for the services in the court.))~~  
9 If, in a worker or beneficiary appeal to the superior or appellate  
10 court from the decision and order of the board, the decision and order  
11 of the board is reversed or modified and if the accident fund or  
12 medical aid fund is affected by the litigation, or if in an appeal by  
13 the department or employer the worker or beneficiary's right to relief  
14 is sustained, or in an appeal by a worker involving a state fund  
15 employer with twenty-five employees or less, in which the department  
16 does not appear and defend, and the board order in favor of the  
17 employer is sustained, the attorney's fee permitted under RCW 51.52.132  
18 and fixed by the court under RCW 51.52.120, for services before the  
19 court only, and the fees of medical and other witnesses and the costs  
20 shall be payable out of the administrative fund of the department. In  
21 the case of self-insured employers, the attorney's fee(~~s~~) permitted  
22 under RCW 51.52.132 and fixed by the court under RCW 51.52.120, for  
23 services before the court only, and the fees of medical and other  
24 witnesses and the costs shall be payable directly by the self-insured  
25 employer.

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