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**SUBSTITUTE SENATE BILL 6302**

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**State of Washington**

**62nd Legislature**

**2012 Regular Session**

**By** Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Kohl-Welles, Conway, Keiser, Kline, Pridemore, and Chase)

READ FIRST TIME 02/03/12.

1       AN ACT Relating to claim files and compensation under the  
2 industrial insurance laws; amending RCW 51.28.070 and 51.52.120; and  
3 creating a new section.

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

5       **Sec. 1.** RCW 51.28.070 and 1990 c 209 s 2 are each amended to read  
6 as follows:

7       Information contained in the claim files and records of injured  
8 workers, information submitted to the board of industrial insurance  
9 appeals or to the department pursuant to the negotiation and approval  
10 of a claims resolution structured settlement agreement, and information  
11 developed during conferences or hearings on claims resolution  
12 structured settlement agreements, under the provisions of this title,  
13 shall be deemed confidential and shall not be open to public inspection  
14 (other than to public employees in the performance of their official  
15 duties), but representatives of a claimant, be it an individual or an  
16 organization, may review a claim file or receive specific information  
17 therefrom upon the presentation of the signed authorization of the  
18 claimant. A claimant may review his or her claim file if the director  
19 determines, pursuant to criteria adopted by rule, that the review is in

1 the claimant's interest. Employers or their duly authorized  
2 representatives may review any files of their own injured workers in  
3 connection with any pending claims. Physicians treating or examining  
4 workers claiming benefits under this title, or physicians giving  
5 medical advice to the department regarding any claim may, at the  
6 discretion of the department, inspect the claim files and records of  
7 injured workers, and other persons may make such inspection, at the  
8 department's discretion, when such persons are rendering assistance to  
9 the department at any stage of the proceedings on any matter pertaining  
10 to the administration of this title.

11 NEW SECTION. **Sec. 2.** The department of labor and industries shall  
12 provide the appropriate committees of the legislature by December 31,  
13 2012, with a plan to define the term "claim file" for state fund and  
14 self-insured industrial insurance claims. The plan shall include a  
15 timeline for gathering input from representatives of employers and  
16 workers, and for adopting rules under the administrative procedure act  
17 or for submitting recommended statutory language, as appropriate. The  
18 plan and rules or recommended legislation shall also address when claim  
19 files must be submitted by self-insured employers to the department of  
20 labor and industries and to injured workers or their representatives,  
21 and any recommended consequences for failure to comply.

22 **Sec. 3.** RCW 51.52.120 and 2011 1st sp.s. c 37 s 304 are each  
23 amended to read as follows:

24 (1) Except for claim resolution structured settlement agreements,  
25 it shall be unlawful for an attorney engaged in the representation of  
26 any worker or beneficiary to charge for services in the department any  
27 fee in excess of a reasonable fee, of not more than thirty percent of  
28 the increase in the award secured by the attorney's services. Such  
29 reasonable fee shall be fixed by the director or the director's  
30 designee for services performed by an attorney for such worker or  
31 beneficiary, if written application therefor is made by the attorney,  
32 worker, or beneficiary within one year from the date the final decision  
33 and order of the department is communicated to the party making the  
34 application.

35 (2) If, on appeal to the board, the order, decision, or award of  
36 the department is reversed or modified and additional relief is granted

1 to a worker or beneficiary, or in cases where a party other than the  
2 worker or beneficiary is the appealing party and the worker's or  
3 beneficiary's right to relief is sustained by the board, the board  
4 shall fix a reasonable fee for the services of his or her attorney in  
5 proceedings before the board if written application therefor is made by  
6 the attorney, worker, or beneficiary within one year from the date the  
7 final decision and order of the board is communicated to the party  
8 making the application. In fixing the amount of such attorney's fee,  
9 the board shall take into consideration the fee allowed, if any, by the  
10 director, for services before the department, and the board may review  
11 the fee fixed by the director. Any attorney's fee set by the  
12 department or the board may be reviewed by the superior court upon  
13 application of such attorney, worker, or beneficiary. The department  
14 or self-insured employer, as the case may be, shall be served a copy of  
15 the application and shall be entitled to appear and take part in the  
16 proceedings. Where the board, pursuant to this section, fixes the  
17 attorney's fee, it shall be unlawful for an attorney to charge or  
18 receive any fee for services before the board in excess of that fee  
19 fixed by the board.

20 (3) For claim resolution structured settlement agreements, fees for  
21 attorney services are limited to fifteen percent of the total amount to  
22 be paid to the worker after the agreement becomes final. The board  
23 will also decide on any disputes as to attorneys' fees for services  
24 related to claim resolution structured settlement agreements consistent  
25 with the procedures in subsection (2) of this section.

26 (4) If, on appeal to the board from a decision or order of the  
27 department denying the reopening of a claim previously resolved with a  
28 structured settlement agreement, the decision is reversed or modified  
29 and the relief sought by the claimant is fully or partially awarded, a  
30 reasonable fee for the services of the worker's attorney shall be fixed  
31 by the board, and the board shall order reimbursement for all  
32 reasonable costs of litigation, including fees of the medical and other  
33 witnesses. In cases of self-insured employers, the attorney fees fixed  
34 by the board and the costs set by the board shall be payable directly  
35 by the self-insured employer. In all other cases, the fees and costs  
36 shall be paid by the department.

37 (5) In an appeal to the board involving the presumption established

1 under RCW 51.32.185, the attorney's fee shall be payable as set forth  
2 under RCW 51.32.185.

3 ~~((+5))~~ (6) Any person who violates this section is guilty of a  
4 misdemeanor.

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