

HOUSE BILL REPORT

HB 1463

*As Reported By House Committee on:
Commerce & Labor*

Title: An act relating to employee rights regarding industrial insurance claims.

Brief Description: Establishing procedures for industrial insurance claims.

Sponsor(s): Representatives R. King, Fuhrman, Cole, Heavey, Jones and Franklin.

Brief History:

Reported by House Committee on:
Commerce & Labor, February 22, 1991, DPS.

**HOUSE COMMITTEE ON
COMMERCE & LABOR**

Majority Report: *That Substitute House Bill No. 1463 be substituted therefor, and the substitute bill do pass.*
Signed by 11 members: Representatives Heavey, Chair; Cole, Vice Chair; Fuhrman, Ranking Minority Member; Lisk, Assistant Ranking Minority Member; Franklin; Jones; R. King; O'Brien; Prentice; Vance; and Wilson.

Staff: Chris Cordes (786-7117).

Background: Qualifying employers are allowed to self-insure their workers' compensation programs. Self-insurers provide for administration of their injured worker's claims, under regulation by the Department of Labor and Industries.

In an industrial insurance appeal to superior court, the injured worker's attorneys' fees and costs are paid by the department if a decision of the Board of Industrial Insurance Appeals is reversed or modified and the accident fund is affected by the litigation. In self-insurer cases, the employer must pay the attorneys' fees and costs if the board's decision is reversed or modified and additional benefits are ordered that would have been paid from the accident fund in state fund cases. The worker's litigation costs are not paid when the worker successfully defends a favorable board decision on appeal to the courts.

Summary of Substitute Bill: A self-insured employer is required to provide a free copy of the employee's claim file within 15 days of a request by the employee or employee's representative, if the request is permitted under statutes authorizing access to claim files.

A self-insured employer must notify the Department of Labor and Industries of any employee protest relating to an industrial insurance claim within five working days. A medical report must be submitted by a self-insured employer with each request for closure of an industrial insurance claim.

A self-insured employer must request allowance or denial of a claim within 60 days of the date the claim is filed or the claim will be deemed allowed. The self-insurer may request extension of the time limit for an additional 30 days if there is good cause and if written notice is provided to the employee within 45 days from the date the claim is filed.

Failure of a self-insurer to comply with these provisions subjects the self-insurer to a penalty, not to exceed \$500, that the department will collect for the benefit of the worker.

If the worker appeals an order of the Board of Industrial Insurance Appeals to the superior court or an appellate court, the worker's litigation costs are paid by the department or self-insurer if the board's order is reversed or modified. The worker's costs are also paid in an appeal by the employer or department if the worker's right to relief is sustained.

Substitute Bill Compared to Original Bill: The substitute bill: (1) clarifies when a worker is entitled to attorneys' fees and litigation costs. The worker's costs are paid in an appeal by the worker when the order of the Board of Industrial Insurance Appeals is reversed or modified. The costs are paid in an appeal by the employer or Department of Labor and Industries when the worker's right to relief is sustained; (2) clarifies that the worker may request a copy of his or her claim file when the request is consistent with other provisions that determine file access; (3) extends the time that a self-insurer may transmit notice of a protest or appeal from one day to five days and provides that the filing of a protest with the employer is deemed to be the date that the protest is received by the department; and (4) clarifies that the penalties imposed for employer violations are collected by the department for the benefit of the worker.

Fiscal Note: Available.

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

Testimony For: If workers' litigation costs are covered by the employer when the worker wins the case, unnecessary law suits might not be filed by employers. Furthermore, workers' cannot afford the delays that often occur in getting their benefits. Time lines and rules are needed to improve the worker's treatment under self-insurance.

Testimony Against: The bill contains provisions that conflict with other provisions in the statute and contains vague terms that are not defined. The time period for reporting protests to the department is unrealistic. There is concern that appeals may be increased if the worker's litigation costs are paid.

Witnesses: (in favor) Cindy Zehnder, Teamsters; Sidney Swan and Dennis Martin, Washington State Trial Lawyers Association; Dave Westberg, International Union of Engineers; Jeff Johnson, Washington State Labor Council; and Manuel Arambul, Injured Workers United. (opposed) Wayne Williams, Washington Self-Insurers Association; and Gary Smith, Independent Business Association.