**SENATE BILL REPORT**

**SB 5515**

**AS REPORTED BY COMMITTEE ON LABOR & COMMERCE, MARCH 2, 1993**

**Brief Description:** Changing provisions relating to industrial insurance claims.

**SPONSORS:** Senators Prentice and Sutherland

**SENATE COMMITTEE ON LABOR & COMMERCE**

**Majority Report:** That Substitute Senate Bill No. 5515 be substituted therefor, and the substitute bill do pass.
Signed by Senators Moore, Chairman; Prentice, Vice Chairman; Fraser, Pelz, Sutherland, Vognild, and Wojahn.

**Minority Report:** Do not pass.
Signed by Senators Amondson, Barr, Cantu, Newhouse, and Prince.

**Staff:** David Cheal (786-7576)

**Hearing Dates:** February 19, 1993; March 2, 1993

**BACKGROUND:**

The Washington Supreme Court has recently ruled that attorneys of an employer or the Department of Labor and Industries may contact and interview a treating physician of a worker in the preparation of an appeal to the Board of Industrial Insurance Appeals. The court had earlier come to the opposite conclusion in the context of a personal injury action in superior court.

The rules regarding attorney's fees in cases involving appeals from the Board of Industrial Insurance Appeals to the courts do not follow any rational pattern. For example, a claimant could prevail at the board and also prevail in superior court and not be entitled to attorney's fees for the superior court appeal. However, if the worker loses at the board level and wins in superior court, the worker would be entitled to attorney's fees. These rules, such as they are, only apply to the superior court level. In the case of appeals to a higher level, each party apparently must bear his or her own costs.

A claimant is entitled to attorney's fees in court appeals only if time loss is the issue. A claimant might prevail on the issue of being entitled to medical benefits, and would not be entitled to attorney's fees.

Claimants and claimant's attorneys have reported difficulty in obtaining a full copy of the employee's claim file from self-insurers, and of having to pay very high copying costs for the portions of the file that are provided.

There is no time limit within which self-insurers must request allowance or denial of a claim so long as they pay provisional benefits during the pendancy of their decision.

**SUMMARY:**

During an appeal to the Board of Industrial Insurance Appeals, ex parte contacts between a representative of an employer, self-insured employer or the department and a claimant's treating, examining or consulting physician are prohibited, except with prior notice to the worker or worker's representative. Any contact must be conducted under applicable civil rules of discovery.

The rules regarding attorney's fees in appeals from a decision of the Board of Industrial Insurance Appeals either to superior court or the court of appeals are made consistent with the principle that if the worker prevails, the worker is entitled to attorney's fees. The worker is also entitled to other litigation costs if he or she prevails. If a worker loses at any of these levels, he or she is not entitled to attorney's fees or costs.

Self-insurers are required to provide a copy of the entire contents of a claim file upon request of an employee or employee's representative, without charge. If the request is for a portion of the file then they only need provide that portion. A self-insurer must notify the department of any protest or appeal of a claims administration decision within five working days of the time they receive the protest or appeal.

A self-insurer must request allowance or denial of a claim within 60 days from the date the claim is filed. This deadline may be extended for an additional 30 days if requested within 45 days from the time the claim is filed. Failure to meet these deadlines results in allowance of the claim.

Failure to comply with these requirements can subject a self-insurer to a penalty which is paid to the employee.

**EFFECT OF PROPOSED SUBSTITUTE:**

The prohibition against ex parte contact with claimant's doctors to the issues on appeal is limited.

A self-insurer may make a reasonable charge for second and subsequent requests for the claim file by a claimant.

A self-insurer may request more than 90 days to reject or allow a claim upon timely request and for good cause supported by affidavits of doctors or investigators.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** requested

**TESTIMONY FOR:**

Defense attorneys sometimes inappropriately question claimants' physicians with the claimants' attorneys present. Even though these ex parte contacts were recently approved by the Washington Supreme Court, it is bad policy.

A claimant can prevail in a dispute with the employer over a worker's compensation issue through an appeal to the Board of Industrial Insurance Appeals and still have to pay his or her own attorney's fees. This huge expense when they are successful and unwilling litigants is unfair.

Claimants are sometimes charged unfairly high amounts to get a copy of their claim.

Self-insurers should either allow a claim or reject a claim within a reasonable time, or demonstrate why they need more time.

**TESTIMONY AGAINST:**

Using formal discovery procedures in industrial insurance appeals will needlessly increase the cost. Sometimes the defense will call the attending physician as a witness, and need to meet with them in private to prepare them. The Supreme Court has approved this practice and we should have a chance to see how it works. Self-insurers should be able to make a reasonable charge for files, especially second or subsequent requests.

Self-insurers often need more than 60 to 90 days to evaluate a claim.

The department might not be able to administer the claim properly as to issues not on appeal, if they cannot communicate freely with the claimants' doctors.

**TESTIFIED:** PRO: Wayne Lieb; Dennis Martin; David Westberg; Bob Dilger; CON: Gary Kelin; Kathryn Fewell; Clif Finch; Jody Moran; Mike Watson