

# HOUSE BILL REPORT

## HB 1611

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**As Reported by House Committee On:**  
Commerce & Labor

**Title:** An act relating to requiring payment of industrial insurance benefits during reconsideration or appeal.

**Brief Description:** Requiring payment of industrial insurance benefits during reconsideration or appeal.

**Sponsors:** Representatives Conway, Wood and Kenney.

**Brief History:**

**Committee Activity:**

Commerce & Labor: 2/17/03, 3/5/03 [DPA].

**Brief Summary of Amended Bill**

- Requires time-loss and medical benefits to continue while an employer's request for reconsideration or appeal of an order granting these benefits to an injured worker is pending.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass as amended. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins, Kenney and McCoy.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Chandler, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Crouse and Holmquist.

**Staff:** Chris Cordes (786-7103).

**Background:**

The Industrial Insurance Act (Act) permits employers or workers to contest orders issued by the Department of Labor and Industries (Department). Aggrieved parties may appeal directly to the Board of Industrial Insurance Appeals (Board). The parties also may, before appealing a departmental order to the Board, request reconsideration by the

Department.

The Act does not require the payment of benefits during reconsideration or appeal, but allows the Department to adopt policies regarding the payment of benefits while an appeal is pending at the Board. The Department's written policy generally does not require the payment of time-loss benefits while an employer's appeal is pending unless the issue under appeal does not involve the payment of time-loss benefits or the allowance or reopening of the claim, or unless the employer's appeal is unfounded. The Department's policy states that it is intended to avoid unnecessary Department recoupment costs when an appeal is resolved in favor of the employer. If the Department pays benefits, all parties to the appeal are notified and the benefits are subject to recoupment.

If a worker is overpaid benefits, the Department will begin collection action on the overpayment order unless the overpayment is being deducted from ongoing time-loss.

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**Summary of Amended Bill:**

Injured workers must continue to receive time-loss and medical benefits ordered by the Department while the order, at the request of the employer, is under reconsideration by the Department or under appeal at the Board.

The benefits are subject to repayment and recoupment if determined to be erroneously granted.

**Amended Bill Compared to Original Bill:**

The amendment makes the provisions for paying benefits under appeal consistent with the provisions for reconsideration by clarifying that the benefits to which the worker is entitled are those benefits granted by the order under appeal.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** If the Department finds that the worker is eligible for benefits, these benefits should be paid, just as the benefits would not be paid when the worker is found not to be eligible. There is rarely a problem with state funds claims because the Department generally pays benefits during the appeal period. But self-insurers can stop benefits by appealing. These benefits are subject to recoupment if the Department's

order is overturned. The Department has not experienced many problems with recouping overpayments.

**Testimony Against:** This bill would create an imbalance in the appeal process. Self-insurers do not have the same ability to recoup benefits that the Department has. Most appeals are by workers, and employers win the majority of the appeals. This bill could add incentives to delay cases while benefits are paid because most injured workers will be judgment-proof. There are already long delays in resolving appeals and reconsideration actions. By the time the process is concluded, there could be thousands of dollars in overpayments to the worker. If the worker's benefits are upheld on appeal, the worker receives interest on the benefits that are owing. If the controversy is over potentially harmful medical treatment, the worker could suffer further harm. Although there is some merit in this bill, it is another small change that compounds the overall concerns with the industrial insurance system. It is not clear whether the worker would continue to get benefits even if eligibility for the benefits changed.

**Testified:** (In support) Robby Stern, Washington State Labor Council; and Michael Temple, Washington State Trial Lawyers Association.

(Opposed) Clif Finch, Association of Washington Business; and Dave Kaplan, Washington Self-Insurers Association.