

SENATE BILL REPORT

SB 6427

As Reported By Senate Committee On:
Commerce & Trade, February 4, 2004

Title: An act relating to industrial insurance appeals.

Brief Description: Regarding industrial insurance appeals.

Sponsors: Senator Honeyford.

Brief History:

Committee Activity: Commerce & Trade: 1/22/04, 2/4/04 [DPS, DNP].

SENATE COMMITTEE ON COMMERCE & TRADE

Majority Report: That Substitute Senate Bill No. 6427 be substituted therefor, and the substitute bill do pass.

Signed by Senators Honeyford, Chair; Hewitt, Vice Chair; and Mulliken.

Minority Report: Do not pass.

Signed by Senators Franklin and Keiser.

Staff: Jennifer Strus (786-7316)

Background: An attorney who represents a worker or beneficiary before the Department of Labor and Industries (L&I) may charge a reasonable fee for his or her services, but that fee may not exceed 30 percent of the increase in the award that was secured because of the attorney's services. If, in an appeal before the Board of Industrial Insurance Appeals (BIIA), L&I's order, decision or award is reversed, and the attorney, worker or beneficiary requests it, the BIIA will set a reasonable fee. Generally, neither L&I nor BIIA is involved in fee setting unless the attorney or worker request it. If no request is made, the fee charged by the attorney will most likely be the fee upon which the parties have previously agreed. If the matter is appealed to either the superior or appellate courts, the court will set a reasonable fee.

When a worker or beneficiary secures an award as a result of an attorney's services, that award is paid to the attorney who deducts his or her fee before remitting the remainder to the worker or beneficiary.

Summary of Substitute Bill: It is a misdemeanor for an attorney representing a worker or beneficiary in a workers' compensation matter to charge or receive a fee in excess of 20 percent of the compensation awarded or the amount fixed by L&I, the BIIA or the court, whichever is less. This restriction applies even though the attorney may have represented the worker in multiple jurisdictions on the same claim. L&I must notify any worker or beneficiary represented by an attorney of the restrictions on the fee an attorney can charge or be paid. The attorney who represents a worker or beneficiary shall be paid his or her fee by the worker or beneficiary, but only after the worker or beneficiary has received the total

compensation to which he or she is entitled. An attorney convicted of charging an inappropriate fee in a workers' compensation case, may be barred from representing clients in workers' compensation matters in the future.

Substitute Bill Compared to Original Bill: It is clarified that the 20 percent fee restriction applies even though the attorney may have represented the worker in multiple jurisdictions on the same claim. The worker must pay the attorney's fees out of the compensation he or she receives.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The Cockle decision left open the question of how many fringe benefits go into the definition of wages; lots of these cases are appealed to the Board of Industrial Insurance Appeals. The law should be changed so that the incentive for lawyers to take these cases is removed. Do not want to pit the attorney and client against each other in a workers' compensation case and the changes in this bill would help prevent that.

Testimony Against: The present system, with its limit of 30 percent of the compensation awarded works well enough and need not be changed. If a client feels he or she has been improperly charged by an attorney the current law allows the client to ask the department, the board or the courts to set the fee. Attorneys will leave this area of practice if this legislation passes and clients will have fewer good attorneys to represent them in these cases. Unions have never received complaints from members that attorneys in workers' compensation cases charge too much.

Testified: PRO: Amber Balch Carter, AWB; Dan Fazio, Farm Bureau; CON: Wayne Lieb, Washington State Trial Lawyers' Association; David Johnson, WSBCTC; Robby Stern, WSLC; Frank Prohaska, Pulp and Paper Union.