

HOUSE BILL REPORT

SHB 2407

As Passed House:
February 11, 2012

Title: An act relating to claims resolution structured settlement agreements.

Brief Description: Restricting the use of information related to claims resolution structured settlement agreements.

Sponsors: House Committee on State Government & Tribal Affairs (originally sponsored by Representatives Roberts, Green, Ormsby, Reykdal, Moeller, Upthegrove and Maxwell).

Brief History:

Committee Activity:

State Government & Tribal Affairs: 1/23/12, 1/25/12, 1/30/12 [DPS].

Floor Activity:

Passed House: 2/11/12, 53-39.

Brief Summary of Substitute Bill

- Exempts from disclosure under the Public Records Act all information related to individual claims resolution structured settlement agreements submitted to the Board of Industrial Insurance Appeals (Board), other than final orders from the Board.
- Makes specified information gathered during the claims resolution structured settlement agreement process inadmissible in any future litigation.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Hunt, Chair; Appleton, Vice Chair; Darneille, Dunshee, McCoy and Miloscia.

Minority Report: Do not pass. Signed by 5 members: Representatives Taylor, Ranking Minority Member; Overstreet, Assistant Ranking Minority Member; Alexander, Condotta and Hurst.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Thamas Osborn (786-7129).

Background:

Public Records Act.

The Public Records Act (PRA) requires that all state and local government agencies make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted liberally, and the exemptions narrowly, in order to effectuate a general policy favoring disclosure.

State Industrial Insurance Laws.

Under the state's industrial insurance laws, employers must insure through the State Fund administered by the Department of Labor and Industries (Department) or may self-insure if qualified. Workers who, in the course of employment, are injured or disabled from an occupational disease are entitled to benefits. Depending on the disability, workers are entitled to medical, temporary time-loss, and vocational rehabilitation benefits, as well as benefits for permanent disabilities. The act provides that a worker may not waive industrial insurance benefits by an agreement and that any such agreement is void.

The Workers Compensation Advisory Committee (WCAC) is a 10-member committee tasked with studying aspects of the workers compensation system. Workers and employers are represented on the WCAC.

Claim Resolution Structured Settlement Agreements: RCW 51.04.063.

Legislation passed in 2011 authorized specified injured workers, classified by age, to choose from one of three options for the resolution of a claim:

- to continue to receive all benefits to which they are entitled under state industrial insurance laws;
- to participate in vocational training, if eligible; or
- to initiate and agree to a resolution of their claim with a structured settlement.

Claim Resolution Structured Settlement Agreements.

General. Certain injured workers may resolve their claims with a claim resolution structured settlement agreement (agreement). Beginning January 1, 2012, when settlements may first be agreed to, workers must be age 55 or older. Beginning January 1, 2015, workers must be age 53 or older, and beginning January 1, 2016, workers must be age 50 or older. The agreement may not settle medical benefits or reverse or set aside an order allowing a claim. The parties may initiate agreements after 180 days from the receipt of the claim by the Department or self-insurer. The order allowing the claim must be final and binding.

The agreement must provide a periodic payment schedule equal to at least 25 percent, but not more than 150 percent, of the average monthly wage, except that the first payment may be up

to six times the average monthly wage. A third party administrator of a self-insured employer must disburse payment pursuant to the agreement.

Process. All agreements must be approved by the Board of Industrial Insurance Appeals (Board). If the worker is unrepresented, an industrial appeals judge (IAJ) with the Board must schedule a conference with the parties within 14 days of submittal for purposes of reviewing the agreement terms and ensuring that the worker has an adequate understanding of workers' compensation benefits and that an agreement may alter the benefits. The IAJ may approve an agreement only if the agreement is in the best interest of the worker. The IAJ must consider the following best interest factors, with no factor being determinative: nature and extent of the worker's injuries and disabilities; the worker's age and life expectancy; the worker's other benefits and the effect of an agreement on those benefits; and the marital and domestic partnership status of the worker. Within seven days of the conference, the IAJ must allow or reject the agreement. There is no appeal from this decision. If a worker is represented by an attorney, the parties submit the agreement directly to the Board.

The Board must approve the agreement within 30 days unless it finds that: (1) the parties have not entered the agreement knowingly or willingly; or (2) the agreement (a) is the result of a material misrepresentation of law or fact, (b) is the result of harassment or coercion, or (c) is unreasonable as a matter of law. A party may revoke consent to the agreement within 30 days after the Board approves the agreement. An agreement is not subject to appeal.

Summary of Substitute Bill:

The act exempts from disclosure under the PRA all information related to individual agreements submitted to the Board, other than final orders from the Board.

Information gathered during the agreement process, including, but not limited to, forms filled out by the parties and testimony before the Board during a claims resolution structured settlement conference, is a statement made in the course of compromise negotiations and is inadmissible in any future litigation.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) A great deal of personal information regarding an injured claimant is submitted to the Board in the course of negotiating an agreement. This information includes medical and financial records that are sensitive and highly personal. It is important that such information remain private and not be subject to disclosure under the PRA. This bill would keep such information private, which is consistent with the intent of the PRA. Information disclosed during the settlement negotiation process should always remain private.

(With concerns) The bill needs to be better tailored to the processes used by the Board and the Department. It unduly restricts access to records that an employer might need for legitimate purposes and does not allow for adequate disclosure of the details of a settlement. The bill could act as an impediment to the structured settlement process.

(Opposed) None.

Persons Testifying: (In support) Representative Roberts, prime sponsor; and Larry Shannon, Washington State Association of Justice.

(With concerns) Kris Tefft, Association of Washington Business; and Kathleen Collins, Washington Self Insurers Association.

Persons Signed In To Testify But Not Testifying: Rebecca Johnson, Washington State Labor Council; Vickie Kennedy, Department of Labor and Industries; and Rowland Thompson, Allied Daily Newspapers of Washington.