

SB 5822 - S AMD 76
By Senator Hobbs

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 51.04.063 and 2014 c 142 s 2 are each amended to
4 read as follows:

5 (1) Notwithstanding RCW 51.04.060 or any other provision of this
6 title, (~~beginning on January 1, 2012,~~) an injured worker who is at
7 least (~~fifty-five~~) forty years of age (~~on or after January 1,~~
8 ~~2012, fifty-three years of age on or after January 1, 2015, or fifty~~
9 ~~years of age on or after January 1, 2016,~~) may choose from the
10 following: (a) To continue to receive all benefits for which they are
11 eligible under this title, (b) to participate in vocational training
12 if eligible, or (c) to initiate and agree to a resolution of their
13 claim with a structured settlement.

14 (2)(a) As provided in this section, the parties to an allowed
15 claim may initiate and agree to resolve a claim with a structured
16 settlement for all benefits other than medical. Parties as defined in
17 (b) of this subsection may only initiate claim resolution structured
18 settlements if at least one hundred eighty days have passed since the
19 claim was received by the department or self-insurer and the order
20 allowing the claim is final and binding. All requirements of this
21 title regarding entitlement to and payment of benefits will apply
22 during this period. All claim resolution structured settlement
23 agreements must be approved by the board of industrial insurance
24 appeals.

25 (b) For purposes of this section, "parties" means:

26 (i) For a state fund claim, the worker, the employer, and the
27 department. The employer will not be a party if the costs of the
28 claim or claims are no longer included in the calculation of the
29 employer's experience factor used to determine premiums, if they
30 cannot be located, are no longer in business, or they fail to respond
31 or decline to participate after timely notice of the claim resolution
32 settlement process provided by the board and the department.

1 (ii) For a self-insured claim, the worker and the employer.

2 (c) The claim resolution structured settlement agreements
3 (~~shall~~) must:

4 (i) Bind the parties with regard to all aspects of a claim except
5 medical benefits unless revoked by one of the parties as provided in
6 subsection (6) of this section;

7 (ii) Provide a periodic payment schedule to the worker equal to
8 at least twenty-five percent but not more than one hundred fifty
9 percent of the average monthly wage in the state pursuant to RCW
10 51.08.018, except for the initial payment which may be up to six
11 times the average monthly wage in the state pursuant to RCW
12 51.08.018;

13 (iii) Not set aside or reverse an allowance order;

14 (iv) Not subject any employer who is not a signatory to the
15 agreement to any responsibility or burden under any claim; and

16 (v) Not subject any funds covered under this title to any
17 responsibility or burden without prior approval from the director or
18 designee.

19 (d) For state fund claims, the department (~~shall~~) must
20 negotiate the claim resolution structured settlement agreement with
21 the worker or their representative and with the employer or employers
22 and their representative or representatives.

23 (e) For self-insured claims, the self-insured employer shall
24 negotiate the agreement with the worker or his or her representative.
25 Workers of self-insured employers who are unrepresented may request
26 that the office of the ombuds for self-insured injured workers
27 provide assistance or be present during negotiations.

28 (f) Terms of the agreement may include the parties' agreement
29 that the claim (~~shall~~) must remain open for future necessary
30 medical or surgical treatment related to the injury where there is a
31 reasonable expectation such treatment is necessary. The parties may
32 also agree that specific future treatment (~~shall~~) must be provided
33 without the application required in RCW 51.32.160.

34 (g) Any claim resolution structured settlement agreement entered
35 into under this section must be in writing and signed by the parties
36 or their representatives and must clearly state that the parties
37 understand and agree to the terms of the agreement.

38 (h) If a worker is not represented by an attorney at the time of
39 signing a claim resolution structured settlement agreement, the
40 parties must forward a copy of the signed agreement to the board with

1 a request for a conference with an industrial appeals judge. The
2 industrial appeals judge must schedule a conference with all parties
3 within fourteen days for the purpose of (i) reviewing the terms of
4 the proposed settlement agreement by the parties; and (ii) ensuring
5 the worker has an understanding of the benefits generally available
6 under this title and that a claim resolution structured settlement
7 agreement may alter the benefits payable on the claim or claims. The
8 judge may schedule the initial conference for a later date with the
9 consent of the parties.

10 (i) Before approving the agreement, the industrial appeals judge
11 shall ensure the worker has an adequate understanding of the
12 agreement and its consequences to the worker.

13 (j) The industrial appeals judge may approve a claim resolution
14 structured settlement agreement only if the judge finds that the
15 agreement is in the best interest of the worker. When determining
16 whether the agreement is in the best interest of the worker, the
17 industrial appeals judge (~~shall~~) must consider the following
18 factors, taken as a whole, with no individual factor being
19 determinative:

20 (i) The nature and extent of the injuries and disabilities of the
21 worker;

22 (ii) The age and life expectancy of the injured worker;

23 (iii) Other benefits the injured worker is receiving or is
24 entitled to receive and the effect a claim resolution structured
25 settlement agreement might have on those benefits; and

26 (iv) The marital or domestic partnership status of the injured
27 worker.

28 (k) Within seven days after the conference, the industrial
29 appeals judge (~~shall~~) must issue an order allowing or rejecting the
30 claim resolution structured settlement agreement. There is no appeal
31 from the industrial appeals judge's decision.

32 (l) If the industrial appeals judge issues an order allowing the
33 claim resolution structured settlement agreement, the order must be
34 submitted to the board.

35 (3) Upon receiving the agreement, the board (~~shall~~) must
36 approve it within thirty working days of receipt unless it finds
37 that:

38 (a) The parties have not entered into the agreement knowingly and
39 willingly;

1 (b) The agreement does not meet the requirements of a claim
2 resolution structured settlement agreement;

3 (c) The agreement is the result of a material misrepresentation
4 of law or fact;

5 (d) The agreement is the result of harassment or coercion; or

6 (e) The agreement is unreasonable as a matter of law.

7 (4) If a worker is represented by an attorney at the time of
8 signing a claim resolution structured settlement agreement, the
9 parties (~~shall~~) must submit the agreement directly to the board
10 without the conference described in this section.

11 (5) If the board approves the agreement, it (~~shall~~) must
12 provide notice to all parties. The department (~~shall~~) must place
13 the agreement in the applicable claim file or files.

14 (6) A party may revoke consent to the claim resolution structured
15 settlement agreement by providing written notice to the other parties
16 and the board within thirty days after the date the agreement is
17 approved by the board.

18 (7) To the extent the worker is entitled to any benefits while a
19 claim resolution structured settlement agreement is being negotiated
20 or during the revocation period of an agreement, the benefits must be
21 paid pursuant to the requirements of this title until the agreement
22 becomes final.

23 (8) A claim resolution structured settlement agreement that meets
24 the conditions in this section and that has become final and binding
25 as provided in this section is binding on all parties to the
26 agreement as to its terms and the injuries and occupational diseases
27 to which the agreement applies. A claim resolution structured
28 settlement agreement that has become final and binding is not subject
29 to appeal.

30 (9) All payments made to a worker pursuant to a final claim
31 resolution structured settlement agreement must be reported to the
32 department as claims costs pursuant to this title. If a self-insured
33 employer contracts with a third-party administrator for claim
34 services and the payment of benefits under this title, the third-
35 party administrator (~~shall~~) must also disburse the structured
36 settlement payments pursuant to the agreement.

37 (10) Claims closed pursuant to a claim resolution structured
38 settlement agreement can be reopened pursuant to RCW 51.32.160 for
39 medical treatment only. Further temporary total, temporary partial,
40 permanent partial, or permanent total benefits are not payable under

1 the same claim or claims for which a claim resolution structured
2 settlement agreement has been approved by the board and has become
3 final.

4 (11) Parties aggrieved by the failure of any other party to
5 comply with the terms of a claim resolution structured settlement
6 agreement have one year from the date of failure to comply to
7 petition to the board. If the board determines that a party has
8 failed to comply with an agreement, it will order compliance and will
9 impose a penalty payable to the aggrieved party of up to twenty-five
10 percent of the monetary amount unpaid at the time the petition for
11 noncompliance was filed. The board will also decide on any disputes
12 as to attorneys' fees for services related to claim resolution
13 structured settlement agreements.

14 (12) Parties and their representatives may not use settlement
15 offers or the claim resolution structured settlement agreement
16 process to harass or coerce any party. If the department determines
17 that an employer has engaged in a pattern of harassment or coercion,
18 the employer may be subject to penalty or corrective action, and may
19 be removed from the retrospective rating program or be decertified
20 from self-insurance under RCW 51.14.030.

21 (13) All information related to individual claims resolution
22 structured settlement agreements submitted to the board of industrial
23 insurance appeals, other than final orders from the board of
24 industrial insurance appeals, is private and exempt from disclosure
25 under chapter 42.56 RCW.

26 (14) Information gathered during the claims resolution structured
27 settlement agreement process, including but not limited to forms
28 filled out by the parties and testimony during a claims resolution
29 structured settlement conference before the board of industrial
30 insurance appeals, is a statement made in the course of compromise
31 negotiations and is inadmissible in any future litigation.

32 **Sec. 2.** RCW 51.52.120 and 2011 1st sp.s. c 37 s 304 are each
33 amended to read as follows:

34 (1) Except for claim resolution structured settlement agreements,
35 it shall be unlawful for an attorney engaged in the representation of
36 any worker or beneficiary to charge for services in the department
37 any fee in excess of a reasonable fee, of not more than thirty
38 percent of the increase in the award secured by the attorney's
39 services. Such reasonable fee shall be fixed by the director or the

1 director's designee for services performed by an attorney for such
2 worker or beneficiary, if written application therefor is made by the
3 attorney, worker, or beneficiary within one year from the date the
4 final decision and order of the department is communicated to the
5 party making the application.

6 (2) If, on appeal to the board, the order, decision, or award of
7 the department is reversed or modified and additional relief is
8 granted to a worker or beneficiary, or in cases where a party other
9 than the worker or beneficiary is the appealing party and the
10 worker's or beneficiary's right to relief is sustained by the board,
11 the board shall fix a reasonable fee for the services of his or her
12 attorney in proceedings before the board if written application
13 therefor is made by the attorney, worker, or beneficiary within one
14 year from the date the final decision and order of the board is
15 communicated to the party making the application. In fixing the
16 amount of such attorney's fee, the board shall take into
17 consideration the fee allowed, if any, by the director, for services
18 before the department, and the board may review the fee fixed by the
19 director. Any attorney's fee set by the department or the board may
20 be reviewed by the superior court upon application of such attorney,
21 worker, or beneficiary. The department or self-insured employer, as
22 the case may be, shall be served a copy of the application and shall
23 be entitled to appear and take part in the proceedings. Where the
24 board, pursuant to this section, fixes the attorney's fee, it shall
25 be unlawful for an attorney to charge or receive any fee for services
26 before the board in excess of that fee fixed by the board.

27 (3) For claim resolution structured settlement agreements, fees
28 for attorney services are limited to fifteen percent of the total
29 amount to be paid to the worker after the agreement becomes final.
30 The board will also decide on any disputes as to attorneys' fees for
31 services related to claim resolution structured settlement agreements
32 consistent with the procedures in subsection (2) of this section.

33 (4) If, on appeal to the board from a decision or order of the
34 department denying the reopening of a claim previously resolved with
35 a structured settlement agreement, denying treatment or payment for
36 treatment, or segregating a medical condition or conditions as
37 unrelated to the claim, the decision is reversed or modified and the
38 relief sought by the claimant is fully or partially awarded, a
39 reasonable fee for the services of the worker's attorney shall be
40 fixed by the board, and the board shall order reimbursement for all

1 reasonable costs of litigation, including but not limited to fees of
2 the medical and other witnesses. In cases of self-insured employers,
3 the attorney fees fixed by the board and the costs set by the board
4 shall be payable directly by the self-insured employer. In all other
5 cases, the fees and costs shall be paid by the department out of the
6 administrative fund.

7 (5) In an appeal to the board involving the presumption
8 established under RCW 51.32.185, the attorney's fee shall be payable
9 as set forth under RCW 51.32.185.

10 ((+5+)) (6) Any person who violates this section is guilty of a
11 misdemeanor."

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12 On page 1, line 2 of the title, after "outcomes" strike the
13 remainder of the title and insert "; and amending RCW 51.04.063 and
14 51.52.120."

EFFECT: Changes the age for structured settlements from 18 to age 40; requires that if a claimant is successful in certain appeals to the board of industrial insurance appeals, the board must order reimbursement of reasonable attorneys' fees and costs either directly from the self-insured employer or out of the administrative fund for a state fund claimant; and removes the sections related to modification of procedures for claims to self-insureds, clarification of recovery in third-party legal actions, clarification of occupational disease claims, and the legislative findings.

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