
SENATE BILL 5822

State of Washington

65th Legislature

2017 Regular Session

By Senators Baumgartner, Braun, Rossi, Sheldon, Angel, Becker, Wilson, Schoesler, Bailey, Ericksen, Warnick, King, Honeyford, Brown, Padden, Short, Fain, O'Ban, Hawkins, Zeiger, and Rivers

Read first time 02/15/17. Referred to Committee on Commerce, Labor & Sports.

1 AN ACT Relating to improving workers' compensation system costs
2 and administration and worker outcomes through modification of
3 procedures for claims to self-insureds, clarification of recovery in
4 third-party legal actions, clarification of occupational disease
5 claims, and lowering age barriers for structured settlements;
6 amending RCW 51.24.030, 51.24.050, 51.24.060, 51.08.140, 51.32.180,
7 51.28.055, 51.04.063, and 51.14.130; and creating new sections.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 NEW SECTION. **Sec. 1.** (1) The legislature finds that while
10 significant changes were made to Washington's workers' compensation
11 system in 2011, premium rates and claim costs charged to employers
12 continue to increase, the department of labor and industries'
13 financial reserves for short-term and long-term disability payments
14 continue to fall short of established ranges, and injured workers
15 continue to experience durations and incidences of short-term and
16 long-term disability at rates that far exceed national averages.
17 Because the state must ensure that the workers' compensation system
18 remains financially healthy in order to provide needed resources for
19 injured workers, mitigate costs imposed on employers, and ensure that
20 resources are allocated specifically to work-related injuries and
21 conditions, the legislature intends to adopt a series of targeted

1 reforms to address the costs and administration of workers'
2 compensation while promoting appropriate and productive outcomes for
3 workers.

4 (2) The legislature finds that a fiscally sound industrial
5 insurance system that assures necessary and proper medical care for
6 persons injured at work is integral to the health and economic well-
7 being of workers and the economic welfare of the state. The
8 legislature further finds that reforms are needed to assure the best
9 worker outcomes, including return to work. Improvements are also
10 needed to assure the most efficient and fair system. According to a
11 2012 report of the Upjohn institute for employment research, "A Study
12 of Occupational Disease Claims Within Washington's Workers'
13 Compensation System," which was ordered by the legislature in 2011,
14 occupational disease claims are an increasing percentage of overall
15 claims in Washington, result in significantly higher costs per claim,
16 and are comparatively more likely to result in an adjudication of
17 total permanent disability. Given the higher frequency and severity
18 of occupational disease claims and the gradual loosening through
19 decades of court decisions of the legislature's original intent that
20 the workers' compensation system will only be responsible for costs
21 due to workplace injuries, the legislature intends to clarify the
22 standards for occupational disease coverage and provide injured
23 workers a clear time period in which an occupational disease claim
24 must be filed.

25 (3) The legislature finds the availability of claim resolution
26 structured settlement agreements, as adopted in 2011, creates an
27 important option for resolving the nonmedical portion of appropriate
28 claims. Further, as demonstrated in a 2016 report of the Upjohn
29 institute for employment research, "A Study of Claim Resolution
30 Structured Settlement Agreements," ordered by the legislature in
31 2011, injured workers who exercised this option during the study
32 period reported excellent outcomes and satisfaction with their
33 settlement. Further, the study documented that there have been no
34 unintended adverse consequences to workers from the adoption of claim
35 resolution structured settlement agreements in Washington. However,
36 many fewer claims than the department of labor and industries
37 originally estimated have been settled, resulting in an increase in
38 the department's liabilities for long-term disability claims. In
39 order to make this option available to more injured workers in

1 appropriate claims, the legislature hereby intends to reduce the age
2 restriction originally placed upon eligibility for the program.

3 (4) According to joint legislative audit and review committee
4 performance audits of the Washington workers' compensation system
5 (1998) and claims management processes (2015), the department of
6 labor and industries' current position as a readjudicator of
7 duplicative claims management decisions made by self-insured
8 employers results in substantial delay in issuing final decisions,
9 increased claims cost, and lack of clear communication to injured
10 workers for no productive reason. The committee noted most recently
11 in 2015 that for orders allowing a claim, the department agrees with
12 a self-insured employer ninety-nine percent of the time, and ninety-
13 eight percent of the time for orders denying a claim, yet department
14 readjudication of the decision adds up to forty days of delay to the
15 process. In the meantime, the department has developed a new audit
16 and accountability system for self-insured employers for compliance
17 with all claim and benefit rules and regulations. In light of these
18 developments and to align with the past recommendations of the
19 committee, the legislature intends that the department's role in the
20 management of claims by self-insured employers transition from
21 readjudication to accountability oversight, first with respect to the
22 allowance and denial of claims and by January 1, 2019, with respect
23 to all claims management decisions.

24 **Sec. 2.** RCW 51.24.030 and 1995 c 199 s 2 are each amended to
25 read as follows:

26 (1) If a third person, not in a worker's same employ, is or may
27 become liable to pay damages on account of a worker's injury for
28 which benefits and compensation are provided under this title, the
29 injured worker or beneficiary may elect to seek damages from the
30 third person.

31 (2) In every action brought under this section, the plaintiff
32 shall give notice to the department or self-insurer when the action
33 is filed. The department or self-insurer may file a notice of
34 statutory interest in recovery. When such notice has been filed by
35 the department or self-insurer, the parties shall thereafter serve
36 copies of all notices, motions, pleadings, and other process on the
37 department or self-insurer. The department or self-insurer may then
38 intervene as a party in the action to protect its statutory interest
39 in recovery.

1 (3) For the purposes of this chapter, "injury" shall include any
2 physical or mental condition, disease, ailment or loss, including
3 death, for which compensation and benefits are paid or payable under
4 this title.

5 (4) Damages recoverable by a worker or beneficiary pursuant to
6 the underinsured motorist coverage of an insurance policy shall be
7 subject to this chapter only if the owner of the policy is the
8 employer of the injured worker.

9 (5) For the purposes of this chapter, "recovery" includes all
10 economic and noneconomic damages except loss of consortium.

11 **Sec. 3.** RCW 51.24.050 and 1995 c 199 s 3 are each amended to
12 read as follows:

13 (1) An election not to proceed against the third person operates
14 as an assignment of the cause of action to the department or self-
15 insurer, which may prosecute or compromise the action in its
16 discretion in the name of the injured worker, beneficiary or legal
17 representative.

18 (2) If an injury to a worker results in the worker's death, the
19 department or self-insurer to which the cause of action has been
20 assigned may petition a court for the appointment of a special
21 personal representative for the limited purpose of maintaining an
22 action under this chapter and chapter 4.20 RCW.

23 (3) If a beneficiary is a minor child, an election not to proceed
24 against a third person on such beneficiary's cause of action may be
25 exercised by the beneficiary's legal custodian or guardian.

26 (4) Any recovery made by the department or self-insurer shall be
27 distributed as follows:

28 (a) The department or self-insurer shall be paid the expenses
29 incurred in making the recovery including reasonable costs of legal
30 services;

31 (b) The injured worker or beneficiary shall be paid twenty-five
32 percent of the balance of the recovery made, which shall not be
33 subject to subsection (5) of this section: PROVIDED, That in the
34 event of a compromise and settlement by the parties, the injured
35 worker or beneficiary may agree to a sum less than twenty-five
36 percent;

37 (c) The department and/or self-insurer shall be paid ((the
38 ~~compensation and benefits paid to or on behalf of the injured worker~~
39 ~~or beneficiary by the department and/or self-insurer)) from the~~

1 remaining recovery balance the amount it paid to or on behalf of the
2 injured worker or beneficiary in benefits; and

3 (d) The injured worker or beneficiary shall be paid any remaining
4 balance.

5 (5) Thereafter no payment shall be made to or on behalf of a
6 worker or beneficiary by the department and/or self-insurer for such
7 injury until the amount of any further compensation and benefits
8 shall equal any such remaining balance. Thereafter, such benefits
9 shall be paid by the department and/or self-insurer to or on behalf
10 of the worker or beneficiary as though no recovery had been made from
11 a third person.

12 (6) When the cause of action has been assigned to the self-
13 insurer and compensation and benefits have been paid and/or are
14 payable from state funds for the same injury:

15 (a) The prosecution of such cause of action shall also be for the
16 benefit of the department to the extent of compensation and benefits
17 paid and payable from state funds;

18 (b) Any compromise or settlement of such cause of action which
19 results in less than the entitlement under this title is void unless
20 made with the written approval of the department;

21 (c) The department shall be reimbursed for compensation and
22 benefits paid from state funds;

23 (d) The department shall bear its proportionate share of the
24 costs and reasonable attorneys' fees incurred by the self-insurer in
25 obtaining the award or settlement; and

26 (e) Any remaining balance under subsection (4)(d) of this section
27 shall be applied, under subsection (5) of this section, to reduce the
28 obligations of the department and self-insurer to pay further
29 compensation and benefits in proportion to which the obligations of
30 each bear to the remaining entitlement of the worker or beneficiary.

31 **Sec. 4.** RCW 51.24.060 and 2011 c 290 s 4 are each amended to
32 read as follows:

33 (1) If the injured worker or beneficiary elects to seek damages
34 from the third person, any recovery made shall be distributed as
35 follows:

36 (a) The costs and reasonable attorneys' fees shall be paid
37 proportionately by the injured worker or beneficiary and the
38 department and/or self-insurer: PROVIDED, That the department and/or
39 self-insurer may require court approval of costs and attorneys' fees

1 or may petition a court for determination of the reasonableness of
2 costs and attorneys' fees;

3 (b) The injured worker or beneficiary shall be paid twenty-five
4 percent of the balance of the award: PROVIDED, That in the event of a
5 compromise and settlement by the parties, the injured worker or
6 beneficiary may agree to a sum less than twenty-five percent;

7 (c) The department and/or self-insurer shall be paid the balance
8 of the recovery made, but only to the extent necessary to reimburse
9 the department and/or self-insurer for (~~benefits paid~~) the amount
10 it paid to or on behalf of the injured worker or beneficiary in
11 benefits;

12 (i) The department and/or self-insurer shall bear its
13 proportionate share of the costs and reasonable attorneys' fees
14 incurred by the worker or beneficiary to the extent of the benefits
15 paid under this title: PROVIDED, That the department's and/or self-
16 insurer's proportionate share shall not exceed one hundred percent of
17 the costs and reasonable attorneys' fees;

18 (ii) The department's and/or self-insurer's proportionate share
19 of the costs and reasonable attorneys' fees shall be determined by
20 dividing the gross recovery amount into the benefits paid amount and
21 multiplying this percentage times the costs and reasonable attorneys'
22 fees incurred by the worker or beneficiary;

23 (iii) The department's and/or self-insurer's reimbursement share
24 shall be determined by subtracting their proportionate share of the
25 costs and reasonable attorneys' fees from the benefits paid amount;

26 (d) Any remaining balance shall be paid to the injured worker or
27 beneficiary; and

28 (e) Thereafter no payment shall be made to or on behalf of a
29 worker or beneficiary by the department and/or self-insurer for such
30 injury until the amount of any further compensation and benefits
31 shall equal any such remaining balance minus the department's and/or
32 self-insurer's proportionate share of the costs and reasonable
33 attorneys' fees in regards to the remaining balance. This
34 proportionate share shall be determined by dividing the gross
35 recovery amount into the remaining balance amount and multiplying
36 this percentage times the costs and reasonable attorneys' fees
37 incurred by the worker or beneficiary. Thereafter, such benefits
38 shall be paid by the department and/or self-insurer to or on behalf
39 of the worker or beneficiary as though no recovery had been made from
40 a third person.

1 (2) The recovery made shall be subject to a lien by the
2 department and/or self-insurer for its share under this section.

3 (3) The department or self-insurer has sole discretion to
4 compromise the amount of its lien. In deciding whether or to what
5 extent to compromise its lien, the department or self-insurer shall
6 consider at least the following:

7 (a) The likelihood of collection of the award or settlement as
8 may be affected by insurance coverage, solvency, or other factors
9 relating to the third person;

10 (b) Factual and legal issues of liability as between the injured
11 worker or beneficiary and the third person. Such issues include but
12 are not limited to possible contributory negligence and novel
13 theories of liability; and

14 (c) Problems of proof faced in obtaining the award or settlement.

15 (4) In an action under this section, the self-insurer may act on
16 behalf and for the benefit of the department to the extent of any
17 compensation and benefits paid or payable from state funds.

18 (5) It shall be the duty of the person to whom any recovery is
19 paid before distribution under this section to advise the department
20 or self-insurer of the fact and amount of such recovery, the costs
21 and reasonable attorneys' fees associated with the recovery, and to
22 distribute the recovery in compliance with this section.

23 (6) The distribution of any recovery made by award or settlement
24 of the third party action shall be confirmed by department order,
25 served by a method for which receipt can be confirmed or tracked, and
26 shall be subject to chapter 51.52 RCW. In the event the order of
27 distribution becomes final under chapter 51.52 RCW, the director or
28 the director's designee may file with the clerk of any county within
29 the state a warrant in the amount of the sum representing the unpaid
30 lien plus interest accruing from the date the order became final. The
31 clerk of the county in which the warrant is filed shall immediately
32 designate a superior court cause number for such warrant and the
33 clerk shall cause to be entered in the judgment docket under the
34 superior court cause number assigned to the warrant, the name of such
35 worker or beneficiary mentioned in the warrant, the amount of the
36 unpaid lien plus interest accrued and the date when the warrant was
37 filed. The amount of such warrant as docketed shall become a lien
38 upon the title to and interest in all real and personal property of
39 the injured worker or beneficiary against whom the warrant is issued,
40 the same as a judgment in a civil case docketed in the office of such

1 clerk. The sheriff shall then proceed in the same manner and with
2 like effect as prescribed by law with respect to execution or other
3 process issued against rights or property upon judgment in the
4 superior court. Such warrant so docketed shall be sufficient to
5 support the issuance of writs of garnishment in favor of the
6 department in the manner provided by law in the case of judgment,
7 wholly or partially unsatisfied. The clerk of the court shall be
8 entitled to a filing fee under RCW 36.18.012(10), which shall be
9 added to the amount of the warrant. A copy of such warrant shall be
10 mailed to the injured worker or beneficiary within three days of
11 filing with the clerk.

12 (7) The director, or the director's designee, may issue to any
13 person, firm, corporation, municipal corporation, political
14 subdivision of the state, public corporation, or agency of the state,
15 a notice and order to withhold and deliver property of any kind if he
16 or she has reason to believe that there is in the possession of such
17 person, firm, corporation, municipal corporation, political
18 subdivision of the state, public corporation, or agency of the state,
19 property which is due, owing, or belonging to any worker or
20 beneficiary upon whom a warrant has been served by the department for
21 payments due to the state fund. The notice and order to withhold and
22 deliver shall be served by the sheriff of the county or by the
23 sheriff's deputy; by a method for which receipt can be confirmed or
24 tracked; or by any authorized representatives of the director. Any
25 person, firm, corporation, municipal corporation, political
26 subdivision of the state, public corporation, or agency of the state
27 upon whom service has been made shall answer the notice within twenty
28 days exclusive of the day of service, under oath and in writing, and
29 shall make true answers to the matters inquired of in the notice and
30 order to withhold and deliver. In the event there is in the
31 possession of the party named and served with such notice and order,
32 any property which may be subject to the claim of the department,
33 such property shall be delivered forthwith to the director or the
34 director's authorized representative upon demand. If the party served
35 and named in the notice and order fails to answer the notice and
36 order within the time prescribed in this section, the court may,
37 after the time to answer such order has expired, render judgment by
38 default against the party named in the notice for the full amount
39 claimed by the director in the notice together with costs. In the
40 event that a notice to withhold and deliver is served upon an

1 employer and the property found to be subject thereto is wages, the
2 employer may assert in the answer to all exemptions provided for by
3 chapter 6.27 RCW to which the wage earner may be entitled.

4 NEW SECTION. **Sec. 5.** (1) Sections 2 through 4 of this act are
5 an explicit restatement of the legislature's original intent to grant
6 the department of labor and industries or a self-insured employer the
7 authority to reimburse itself from a third-party recovery for the
8 amount paid on behalf of the worker or beneficiary for all economic
9 and noneconomic damages except loss of consortium.

10 (2) Sections 2 through 4 of this act apply to all causes of
11 action commenced on or after the effective date of this section,
12 regardless of when the cause of action arose. To this extent,
13 sections 2 through 4 of this act apply retroactively, but in all
14 other respects they apply prospectively.

15 **Sec. 6.** RCW 51.08.140 and 1961 c 23 s 51.08.140 are each amended
16 to read as follows:

17 (1) "Occupational disease" means such disease or infection as
18 arises ((naturally and proximately)) out of and in the course of the
19 particular employment under ((the mandatory or elective adoption
20 provisions of)) this title in which the worker is exposed to such
21 disease or infection and which meets all of the following criteria:

22 (a) The disease or infection is proximately caused by the
23 distinctive conditions under which the work is performed and risk of
24 exposure inherent therein;

25 (b) The disease or infection arose as a natural incident of the
26 employment-related exposure;

27 (c) The worker would not have ordinarily been exposed to the
28 disease or infection outside of his or her employment; and

29 (d) The disease or infection is not an ordinary condition of life
30 to which the general public is exposed without regard to employment.

31 (2) For the purposes of this section, "proximate cause" means
32 that cause which, in a direct sequence, unbroken by any new,
33 independent cause, produces the disease or infection, and without
34 which the disease or infection would not have occurred.

35 **Sec. 7.** RCW 51.32.180 and 1988 c 161 s 5 are each amended to
36 read as follows:

1 Every worker who suffers disability from an occupational disease
2 arising out of and in the course of employment under the mandatory or
3 elective adoption provisions of this title, or his or her family and
4 dependents in case of death of the worker from such disease or
5 infection, (~~shall~~) must receive the same compensation benefits and
6 medical, surgical and hospital care and treatment as would be paid
7 and provided for a worker injured or killed in employment under this
8 title, except as follows: (~~(a) [(1)]~~) (1) This section and RCW
9 51.16.040 shall not apply where the last exposure to the hazards of
10 the disease or infection occurred prior to January 1, 1937; and (~~(b)~~
11 ~~[(2)]~~) (2) for claims filed on or after July 1, 1988, the rate of
12 compensation for occupational diseases (~~shall~~) must be established
13 as of the date the disease requires medical treatment or becomes
14 totally or partially disabling, whichever occurs first, and without
15 regard to the date of the contraction of the disease or the date of
16 filing the claim.

17 **Sec. 8.** RCW 51.28.055 and 2004 c 65 s 7 are each amended to read
18 as follows:

19 (~~(1) (Except as provided in subsection (2) of this section for~~
20 ~~claims filed for occupational hearing loss, claims for occupational~~
21 ~~disease or infection to be valid and compensable must be filed within~~
22 ~~two years following the date the worker had written notice from a~~
23 ~~physician or a licensed advanced registered nurse practitioner: (a)~~
24 ~~Of the existence of his or her occupational disease, and (b) that a~~
25 ~~claim for disability benefits may be filed. The notice shall also~~
26 ~~contain a statement that the worker has two years from the date of~~
27 ~~the notice to file a claim. The physician or licensed advanced~~
28 ~~registered nurse practitioner shall file the notice with the~~
29 ~~department. The department shall send a copy to the worker and to the~~
30 ~~self-insurer if the worker's employer is self-insured. However, a~~
31 ~~claim is valid if it is filed within two years from the date of death~~
32 ~~of the worker suffering from an occupational disease.)) To be valid
33 and compensable, claims for occupational disease or infection must be
34 filed within one year following the earliest of the following dates:~~

- 35 (a) The date the disease or infection was first diagnosed;
36 (b) The date the worker first received treatment for symptoms of
37 the disease or infection from any health services provider; or
38 (c) The date the worker was first partially or fully restricted
39 from work due to the disease or infection.

1 (2)~~((a) Except as provided in (b) of this subsection,~~) To be
2 valid and compensable, claims for hearing loss due to occupational
3 noise exposure must be filed within two years of the date of the
4 worker's last injurious exposure to occupational noise in employment
5 covered under this title ~~((or within one year of September 10, 2003,~~
6 ~~whichever is later.~~

7 ~~(b) A claim for hearing loss due to occupational noise exposure~~
8 ~~that is not timely filed under (a) of this subsection can only be~~
9 ~~allowed for medical aid benefits under chapter 51.36 RCW)).~~

10 (3) The department may adopt rules to implement this section.

11 **Sec. 9.** RCW 51.04.063 and 2014 c 142 s 2 are each amended to
12 read as follows:

13 (1) Notwithstanding RCW 51.04.060 or any other provision of this
14 title, ~~((beginning on January 1, 2012,))~~ an injured worker who is at
15 least ~~((fifty five))~~ eighteen years of age ~~((on or after January 1,~~
16 ~~2012, fifty three years of age on or after January 1, 2015, or fifty~~
17 ~~years of age on or after January 1, 2016,))~~ may choose from the
18 following: (a) To continue to receive all benefits for which they are
19 eligible under this title, (b) to participate in vocational training
20 if eligible, or (c) to initiate and agree to a resolution of their
21 claim with a structured settlement.

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

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

34 (i) For a state fund claim, the worker, the employer, and the
35 department. The employer will not be a party if the costs of the
36 claim or claims are no longer included in the calculation of the
37 employer's experience factor used to determine premiums, if they
38 cannot be located, are no longer in business, or they fail to respond

1 or decline to participate after timely notice of the claim resolution
2 settlement process provided by the board and the department.

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

4 (c) The claim resolution structured settlement agreements
5 (~~shall~~) must:

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

9 (ii) Provide a periodic payment schedule to the worker equal to
10 at least twenty-five percent but not more than one hundred fifty
11 percent of the average monthly wage in the state pursuant to RCW
12 51.08.018, except for the initial payment which may be up to six
13 times the average monthly wage in the state pursuant to RCW
14 51.08.018;

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

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

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

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

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

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

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

1 (h) If a worker is not represented by an attorney at the time of
2 signing a claim resolution structured settlement agreement, the
3 parties must forward a copy of the signed agreement to the board with
4 a request for a conference with an industrial appeals judge. The
5 industrial appeals judge must schedule a conference with all parties
6 within fourteen days for the purpose of (i) reviewing the terms of
7 the proposed settlement agreement by the parties; and (ii) ensuring
8 the worker has an understanding of the benefits generally available
9 under this title and that a claim resolution structured settlement
10 agreement may alter the benefits payable on the claim or claims. The
11 judge may schedule the initial conference for a later date with the
12 consent of the parties.

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

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

23 (i) The nature and extent of the injuries and disabilities of the
24 worker;

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

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

29 (iv) The marital or domestic partnership status of the injured
30 worker.

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

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

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

1 (a) The parties have not entered into the agreement knowingly and
2 willingly;

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

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

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

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

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

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

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

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

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

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

39 (10) Claims closed pursuant to a claim resolution structured
40 settlement agreement can be reopened pursuant to RCW 51.32.160 for

1 medical treatment only. Further temporary total, temporary partial,
2 permanent partial, or permanent total benefits are not payable under
3 the same claim or claims for which a claim resolution structured
4 settlement agreement has been approved by the board and has become
5 final.

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

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

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

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

34 **Sec. 10.** RCW 51.14.130 and 1993 c 122 s 3 are each amended to
35 read as follows:

36 (1) For any industrial insurance claim for which the worker may
37 be entitled to benefits other than medical treatment only, when a
38 self-insurer has determined to allow an industrial insurance claim,
39 the self-insurer must issue an order allowing the claim to the

1 injured worker, attending medical provider, and the department within
2 (a) sixty days from the date that the claim is filed or (b) one
3 hundred twenty days from the date that the claim is filed if an order
4 is issued as provided in subsection (3) of this section. The order of
5 the self-insurer must be issued consistent with rules adopted by the
6 department.

7 (2) The self-insurer (~~shall~~) must request (~~allowance or~~)
8 denial of a claim within (a) sixty days from the date that the claim
9 is filed or (b) one hundred twenty days from the date that the claim
10 is filed if an order is issued as provided in subsection (3) of this
11 section.

12 (3) When a self-insurer requires additional time to determine
13 whether to allow or request denial of the claim, the self-insurer
14 must issue an order to the injured worker, attending medical
15 provider, and the department within sixty days from the date that the
16 claim is filed indicating a decision requires additional time to
17 determine whether to allow or request denial of the claim. The order
18 must state the reasons why the self-insurer requires additional time
19 to determine whether to allow or request denial of the claim. During
20 the sixty-day period after this order is issued, the self-insurer
21 must pay temporary disability benefits as entitled if the attending
22 provider certifies that the worker cannot return to work because of
23 the injury or illness provided in the claim, and pay for any medical
24 examination or test required by the self-insurer to determine whether
25 to allow or request denial of the claim. In the event the claim is
26 denied by the department, any temporary disability and other benefits
27 paid may be recovered by the self-insurer in accordance with RCW
28 51.32.240.

29 (4) Pending a decision of allowance or denial, temporary
30 disability compensation must be paid in accordance with RCW
31 51.32.190.

32 (5) If the self-insurer fails to act within (a) sixty days from
33 the date that the claim is filed or (b) one hundred twenty days from
34 the date that the claim is filed if an order is issued as provided in
35 subsection (3) of this section, the department (~~shall~~) must
36 promptly intervene and adjudicate the claim.

37 NEW SECTION. Sec. 11. On July 1, 2019, notwithstanding any
38 other provision of Title 51 RCW, all responsibility for the issuance
39 of final and binding orders on claims of workers of a self-insured

1 employer shall be vested in the self-insured employer. The department
2 of labor and industries is directed to develop, in consultation with
3 representatives of self-insured employers, a model that provides for
4 full self-insured claims management responsibility while ensuring the
5 department retains appropriate audit and accountability oversight,
6 including standards for worker protest and appeal rights, and
7 employer communications. The department of labor and industries shall
8 report back to the appropriate committees of the legislature by
9 December 1, 2018, should any amendments to Title 51 RCW be necessary
10 to implement this section.

11 NEW SECTION. **Sec. 12.** The department of labor and industries is
12 authorized to adopt rules as necessary to implement sections 10 and
13 11 of this act to include the form of orders allowing industrial
14 insurance claims consistent with the standards followed by the
15 department.

--- END ---