

SB 5801 - H AMD 1343

By Representative Sells

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

3 **"Sec. 1.** RCW 51.52.130 and 2007 c 490 s 4 are each amended to
4 read as follows:

5 ~~(1) ((If, on appeal to the superior or appellate court from the
6 decision and order of the board, said decision and order is reversed
7 or modified and additional relief is granted to a worker or
8 beneficiary, or in cases where a party other than the worker or
9 beneficiary is the appealing party and the worker's or beneficiary's
10 right to relief is sustained, a reasonable fee for the services of
11 the worker's or beneficiary's attorney shall be fixed by the court.))~~

12 (a) The department will pay a worker's or beneficiary's attorneys'
13 fees, fees of medical and other witnesses, and other statutory costs
14 out of the department's administrative fund when the worker or
15 beneficiary appeals a decision of the board, and the court reverses
16 or modifies the board's order and grants additional relief.

17 (b) (i) Except as provided in (b) (ii) of this subsection, the
18 employer or retrospective rating group will pay a worker's or
19 beneficiary's attorneys' fees, fees of medical and other witnesses,
20 and other statutory costs when the employer or retrospective rating
21 group appeals a decision of the board, and the court sustains in full
22 the worker's or beneficiary's right to contested benefits. If the
23 court sustains only a part of the worker's or beneficiary's right to
24 contested benefits, then the department will pay the worker's or
25 beneficiary's costs and fees out of the department's administrative
26 fund.

27 (ii) If the employer has 25 or fewer employees, the department
28 will pay the worker's or beneficiary's costs and fees out of the
29 department's administrative fund.

30 (c) In fixing the ((fee)) worker's or beneficiary's attorney fees
31 under (a) and (b) of this subsection, the court ((shall)) will take
32 into consideration the ((fee or)) fees((, if any,)) fixed ((by the

1 ~~director and the board)) for such attorney's services before the~~
2 ~~department and the board. If the court finds ((that the fee fixed by~~
3 ~~the director or by the board is)) the fees inadequate for services~~
4 ~~performed ((before the department or board)), or if the director or~~
5 ~~the board ((has)) fixed no fee ((for such services)), then the court~~
6 ~~((shall)) will fix a fee for the attorney's services before the~~
7 ~~department, or the board, as the case may be, in addition to the fees~~
8 ~~fixed for the services in the court. ((If in a worker or beneficiary~~
9 ~~appeal the decision and order of the board is reversed or modified~~
10 ~~and if the accident fund or medical aid fund is affected by the~~
11 ~~litigation, or if in an appeal by the department or employer the~~
12 ~~worker or beneficiary's right to relief is sustained, or in an appeal~~
13 ~~by a worker involving a state fund employer with twenty-five~~
14 ~~employees or less, in which the department does not appear and~~
15 ~~defend, and the board order in favor of the employer is sustained,~~
16 ~~the attorney's fee fixed by the court, for services before the court~~
17 ~~only, and the fees of medical and other witnesses and the costs shall~~
18 ~~be payable out of the administrative fund of the department.))~~

19 (d) The department will pay a state fund employer's attorneys'
20 fees out of the department's administrative fund when the employer
21 has 25 employees or less and when a worker appeals the board
22 decision, and the department does not appear and defend, and the
23 board order in favor of the employer is sustained.

24 (e) In the case of self-insured employers, the attorney fees
25 fixed by the court, for services before the court only, and the fees
26 of medical and other witnesses and the costs shall be payable
27 directly by the self-insured employer.

28 (2) In an appeal to the superior or appellate court involving the
29 presumption established under RCW 51.32.185 or 51.32.187, the
30 attorney's fee shall be payable as set forth under RCW 51.32.185 or
31 51.32.187."

32 Correct the title.

EFFECT: (1) Specifies that the responsibility of the employer or retrospective rating (retro) group for fees and costs incurred by the worker or beneficiary on an unsuccessful appeal brought by the employer or retro group applies when the court fully sustains the right to contested benefits, rather than when the court sustains in full or in part the right to relief.

(2) Provides for payment of the worker's or beneficiary's fees and costs from the Department of Labor and Industries' administrative fund after an appeal by an employer or retro group when:

(a) The court sustains only a part of the right to contested benefits; or

(b) The employer has 25 or fewer employees.

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