

# HOUSE BILL REPORT

## SB 5801

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**As Reported by House Committee On:**  
Labor & Workplace Standards

**Title:** An act relating to attorney and witness fees in industrial insurance court appeals.

**Brief Description:** Concerning attorney and witness fees in industrial insurance court appeals.

**Sponsors:** Senators Keiser, Conway, Hasegawa and Nobles; by request of Department of Labor & Industries.

**Brief History:**

**Committee Activity:**

Labor & Workplace Standards: 2/18/22, 2/22/22 [DP].

**Brief Summary of Bill**

- Requires the employer or retrospective rating group to pay the worker's attorneys' fees and costs when the employer or group appeals a Board of Industrial Insurance Appeals decision, and the court sustains in full or in part the worker's or beneficiary's right to relief.
- Reorganizes other provisions regarding payment of attorneys' fees and costs in workers' compensation appeals.

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### HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** Do pass. Signed by 4 members: Representatives Sells, Chair; Berry, Vice Chair; Bronoske and Ortiz-Self.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Hoff, Ranking Minority Member; Mosbrucker, Assistant Ranking Minority Member; Harris.

**Staff:** Lily Smith (786-7175).

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

## **Background:**

### Workers' Compensation Overview.

Workers who are injured in the course of employment or who are affected by an occupational disease are entitled to workers' compensation benefits, which may include medical, temporary time-loss, and other benefits. The Department of Labor and Industries (L&I) administers the state's workers' compensation system.

To prove an occupational disease, the worker must show the disease arose naturally and proximately out of employment. For certain occupations, such as firefighters, there is a presumption that certain medical conditions are occupational diseases.

### Fixing the Amount of Worker's Attorneys' and Witness Fees in Court Appeals.

A reasonable fee for the services of the worker's or beneficiary's attorney must be fixed by the court if:

- on appeal to the superior or appellate court from a Board of Industrial Insurance Appeals (BIIA) decision and order, the decision and order is reversed or modified, and additional relief is granted to a worker or beneficiary; or
- in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained.

In fixing the fee, the court must take into consideration the fee fixed by L&I and the BIIA for the attorney's services before L&I and the BIIA. If the court finds that the fee fixed by L&I or the BIIA is inadequate for such services, or no fee was fixed, then the court shall fix a fee for the attorney's services before L&I or the BIIA, in addition to the fee fixed for the services in the court.

### Payment of Fees and Costs.

The attorney's fee fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs, must be paid out of L&I's administrative fund if in:

- a worker or beneficiary appeal, the decision and order of the BIIA is reversed or modified and if the L&I accident fund or medical aid fund is affected by the litigation;
- an appeal by L&I or the employer, the worker's or beneficiary's right to relief is sustained; or
- an appeal by a worker involving a state fund employer with 25 employees or less, in which L&I does not appear and defend, and the BIIA order in favor of the employer is sustained.

In the case of self-insured employers, the attorney's fee fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs, must be paid directly by the self-insured employer.

Attorneys' Fees in Appeals-Certain Occupational Disease Presumptions.

In an appeal to the superior or appellate court involving the presumption of occupational diseases related to certain firefighter, fire investigators, and law enforcement officers, the attorney's fee must be paid as provided in the presumption statute.

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**Summary of Bill:**

Attorneys' and Witness Fees in Court Appeals.

An employer or retrospective rating group will pay a worker's or beneficiary's attorneys' fees, fees of medical and other witnesses, and other statutory costs when the employer or retrospective rating group appeals a BIIA decision, and the court sustains in full or in part the worker's or beneficiary's right to relief.

Provisions regarding the payments of attorneys' fees and costs for the following are reorganized:

- appeals by a worker involving a state fund employer with 25 employees or less, in which L&I does not appear and defend, and the BIIA order in favor of the employer is sustained; and
- cases involving self-insured employers.

Attorneys' Fees in Appeals-Certain Occupational Disease Presumptions.

The presumption regarding certain Hanford site workers is added to the provisions requiring attorneys' fees to be paid pursuant to that presumption statute.

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**Appropriation:** None.

**Fiscal Note:** Available.

**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) This bill would address an anomaly in workers' compensation law. Normally a party bringing an unsuccessful appeal would pay the other parties' attorneys' fees and costs, but in workers' compensation, at the judicial level, even when L&I is aligned with the worker on a case and an appeal upholds L&I's order, L&I would need to pay these amounts. There has been an average of about 28 cases in the past five years, for a total amount of about \$580,000 a year out of L&I's administrative fund, which is then effectively a socialized cost through workers' compensation premiums.

(Opposed) Even when an employer wins some of an appeal, it will lose in the payment of fees and costs under this bill. The whole workers' compensation appeals system is unfair, but this would make it even more unfair. If L&I wants to examine the entire system, that would make sense, but just skewing one part of it less in favor to employers does not make sense. This is an insurance system, not necessarily based on principles of fairness. The approach to fees and costs should be consistent from the BIIA level up through the judicial level. This bill will put small businesses at a substantial disadvantage. The threshold for small businesses is too low and inconsistent with federal standards. The appellate level is often a small business's only opportunity for a fair hearing, which is why the current law does not require the losing party to pay the fees and costs of the other party. While the overall cost might seem small, it is huge for an individual small business. The bill should be amended to take the full cost from the accident fund instead. The only justification for this bill is to save the system a small amount of money, at the expense of employers who bear most of the existing costs already.

**Persons Testifying:** (In support) Tammy Fellin, Department of Labor & Industries.

(Opposed) Jim King, Independent Business Association; Patrick Connor, National Federation of Independent Business; and Rose Gundersen, Washington Retail Association.

**Persons Signed In To Testify But Not Testifying:** None.