

SENATE BILL REPORT

SB 6394

As Reported By Senate Committee On:
Commerce & Trade, February 4, 2004

Title: An act relating to industrial insurance final settlement agreements.

Brief Description: Authorizing industrial insurance final settlement agreements.

Sponsors: Senators Honeyford and T. Sheldon.

Brief History:

Committee Activity: Commerce & Trade: 1/23/04, 2/4/04 [DPS, DNP].

SENATE COMMITTEE ON COMMERCE & TRADE

Majority Report: That Substitute Senate Bill No. 6394 be substituted therefor, and the substitute bill do pass.

Signed by Senators Honeyford, Chair; Hewitt, Vice Chair; and Mulliken.

Minority Report: Do not pass.

Signed by Senators Franklin and Keiser.

Staff: Jennifer Strus (786-7316)

Background: An injured worker has no ability to waive the benefits provided under the workers' compensation law. The worker remains entitled to all benefits under the workers' compensation law for which he or she is eligible.

Summary of Substitute Bill: A worker and an employer may enter into a final settlement agreement for one or more workers' compensation claims. This agreement may bind the parties to any and all aspects of a claim. It will not subject any employer who did not sign the agreement to any responsibility under the agreement.

The final settlement agreement must be signed by the employer and the worker. The Board of Industrial Insurance Appeals (BIIA) must approve all settlement agreements.

A final settlement agreement is binding upon L&I and all the parties to the agreement and, once approved by BIIA, is not subject to appeal.

The worker or an employer can revoke consent to the agreement by providing written notice to the other party within 30 days of the date the agreement was approved by BIIA.

If a worker is not represented by an attorney at the time the final settlement agreement is signed, L&I or the self-insurer must forward a copy of the signed agreement to BIIA with a request for a conference with a settlement officer. The settlement officer must convene a conference within 14 days of receiving the request, unless the parties request a later date. The purpose of the conference is to explain the benefits generally available in workers'

compensation cases and that a final settlement agreement may alter the benefits payable on a claim.

The settlement officer can reject a final settlement agreement only if the agreement constitutes a miscarriage of justice. If the agreement is rejected, it is null and void. If the agreement is accepted, the agreement must be forwarded to BIIA for its approval. BIIA may reject the agreement if it believes the agreement represents a miscarriage of justice.

If the parties have provided in the agreement that the claim or claims settled in the agreement are not subject to reopening, any application to reopen the claim must be denied.

A final settlement agreement can be used by an employer as a defense to a new claim for workers' compensation benefits involving the same or similar diagnosis as that dealt with in the agreement.

Substitute Bill Compared to Original Bill: BIIA must approve all final settlements, even those in which the worker was represented by an attorney. Final settlement agreements are binding 30 days, rather than 14 days, after approval by BIIA. The settlement officer may reject an agreement if the agreement represents a miscarriage of justice. BIIA must approve the agreement unless it believes the agreement represents a miscarriage of justice. Either party can revoke the agreement within 30 days, rather than 14 days, after BIIA approves the agreement.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Washington currently has no method for resolving claims. The current system is overly paternalistic. Oregon has a settlement statute and less than 10 percent of claims settled in Oregon are reversed. Settlement of claims is good for workers because it provides finality, planning and early resolution of the claim. The bill is good for employers because it will decrease the time and cost of litigation and provides protection from double-dipping.

Testimony Against: The current protest method in state statute works just fine and does not need to be changed. The bill ignores the requirement that the Department of Labor and Industries protect the state fund. It also does not provide that L&I has any role in these settlements. The bill does not balance the rights of workers with the rights of the employer. Although a system of structured settlements makes good sense, this bill is not the structure that should be used.

Testified: PRO: John Klor, AWB/WSIA; Amber Balch Carter, AWB; Kathleen Collins, WSIA; CON: Dave Johnson, WSBCTC; Wayne Williams, WSTLA.