

SHB 1601 - H AMD 291

By Representative Condotta

NOT CONSIDERED 04/22/2011

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

3 "NEW SECTION. **Sec. 1.** The legislature finds that a fiscally sound
4 industrial insurance system that assures necessary and proper medical
5 care for persons injured at work is integral to the health and economic
6 well-being of workers and the economic welfare of the state. The
7 legislature further finds that reforms are needed to assure the best
8 worker outcomes, including return to work. Improvements are also
9 needed to assure the most efficient and fair system. The legislature
10 intends to make the workers' compensation system more cost-effective by
11 authorizing voluntary settlement agreements and by assuring that the
12 workers' compensation system will only be responsible for costs due to
13 workplace injuries.

14 **Sec. 2.** RCW 51.08.140 and 1961 c 23 s 51.08.140 are each amended
15 to read as follows:

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

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

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

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

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

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

5 **Sec. 3.** RCW 51.32.180 and 1988 c 161 s 5 are each amended to read
6 as follows:

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

22 **Sec. 4.** RCW 51.28.055 and 2004 c 65 s 7 are each amended to read
23 as follows:

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

1 ~~occupational disease.~~) To be valid and compensable, claims for
2 occupational disease or infection must be filed within one year
3 following the earliest of the following dates:

4 (a) The date the disease or infection was first diagnosed;

5 (b) The date the worker first received treatment for symptoms of
6 the disease or infection from any health services provider; or

7 (c) The date the worker was first partially or fully restricted
8 from work due to the disease or infection.

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

15 (b) A claim for hearing loss due to occupational noise exposure
16 that is not timely filed under (a) of this subsection can only be
17 allowed for medical aid benefits under chapter 51.36 RCW. A claim for
18 hearing loss due to occupational noise exposure that is not timely
19 filed under subsection (1) of this section is not valid, and is not
20 allowed for any benefits under this title.

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

22 NEW SECTION. Sec. 5. A new section is added to chapter 51.04 RCW
23 to read as follows:

24 (1)(a) Notwithstanding RCW 51.04.060 or any other provision of this
25 title, the parties to a claim for benefits may enter into a voluntary
26 settlement agreement at any time as provided in this section with
27 respect to one or more claims for benefits under this title. All
28 voluntary settlement agreements must be approved by the board of
29 industrial insurance appeals. The voluntary settlement agreement may:

30 (i) Bind the parties with regard to any or all aspects of a claim
31 including, but not limited to, allowance or rejection of a claim,
32 monetary payment, vocational services, claim closure, and claim
33 reopening under RCW 51.32.160; and

34 (ii) Not subject any employer who is not a signatory to the
35 agreement to any responsibility or burden under any claim.

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

37 (i) For a self-insured claim, the worker and the employer; and

1 (ii) For a state fund claim, the worker, the employer, and the
2 department. If the employer participates in a retrospective rating
3 plan under chapter 51.18 RCW, the retrospective rating group, through
4 its administrator, is also a party.

5 (c) A voluntary settlement agreement entered into under this
6 section must be signed by the parties or their representatives and must
7 clearly state that the parties understand and agree to the terms of the
8 voluntary settlement agreement. Unless one of the parties revokes
9 consent to the agreement, as provided in subsection (3) of this
10 section, the voluntary settlement agreement becomes final and binding
11 thirty days after approval of the agreement by the board of industrial
12 insurance appeals.

13 (d) A voluntary settlement agreement that has become final and
14 binding as provided in this section is binding on the department and on
15 all parties to the agreement as to its terms and the injuries and
16 occupational diseases to which the voluntary settlement applies. A
17 voluntary settlement agreement that has become final and binding is not
18 subject to appeal.

19 (2)(a) If a worker is not represented by an attorney at the time of
20 signing a voluntary settlement agreement, the parties must forward a
21 copy of the signed settlement agreement to the board with a request for
22 a conference with a settlement officer. Unless one of the parties
23 requests a later date, the settlement officer must convene a conference
24 within fourteen days after receipt of the request for the limited
25 purpose of receiving the voluntary settlement agreement of the parties,
26 explaining to the worker the benefits generally available under this
27 title, and explaining that a voluntary settlement agreement may alter
28 the benefits payable on a claim. In no event may a settlement officer
29 render legal advice to any party.

30 (b) Before approving the settlement agreement, the settlement
31 officer shall ensure that the worker has an adequate understanding of
32 the settlement proposal and its consequences to the worker.

33 (c) The settlement officer may reject a settlement agreement only
34 if the officer finds the parties have not entered into the agreement
35 knowingly and willingly. Within seven days after the conference, the
36 settlement officer shall issue an order allowing or rejecting the
37 voluntary settlement agreement. There is no appeal from the settlement
38 officer's decision.

1 (d) If the settlement officer issues an order allowing the
2 voluntary settlement agreement, the order must be submitted to the
3 board.

4 (3) If a worker is represented by an attorney at the time of
5 signing a voluntary settlement agreement, the parties may submit the
6 agreement directly to the board without the conference described in
7 this section.

8 (4) Upon receiving the voluntary settlement agreement, the board
9 shall approve the agreement within thirty working days of receipt
10 unless it finds that the parties have not entered into the agreement
11 knowingly and willingly. If the board approves the agreement, it shall
12 provide notice to the department of the binding terms of the agreement
13 and provide for placement of the agreement in the applicable claim
14 files.

15 (5) A party may revoke consent to the voluntary settlement
16 agreement by providing written notice to the other parties and the
17 board within thirty days after the date the agreement is approved by
18 the board.

19 (6) To the extent the worker is found to be entitled to temporary
20 total disability or permanent total disability benefits while a
21 voluntary settlement agreement is being negotiated, or during the
22 revocation period of an agreement, the benefits must be paid until the
23 agreement becomes final.

24 (7) If the parties have provided in a voluntary settlement
25 agreement that a claim is not subject to reopening under RCW 51.32.160,
26 any application to reopen the claim must be denied.

27 NEW SECTION. **Sec. 6.** A new section is added to chapter 51.04 RCW
28 to read as follows:

29 The department must maintain copies of all voluntary settlement
30 agreements entered into between the parties and develop processes under
31 RCW 51.28.070 to furnish copies of such agreements to any party
32 contemplating any subsequent voluntary settlement agreement with the
33 worker on any claim. The department shall also furnish claims
34 histories that include all prior permanent disability awards received
35 by the worker on any claims by body part and category or percentage
36 rating, as applicable. Copies of such agreements and claims histories
37 shall be furnished within ten working days of a written request. An

1 employer may not consider a prior settlement agreement or claims
2 history when making a decision about hiring or the terms or conditions
3 of employment.

4 NEW SECTION. **Sec. 7.** A new section is added to chapter 51.04 RCW
5 to read as follows:

6 If a worker has received a prior award of, or entered into a
7 voluntary settlement for, total or partial permanent disability
8 benefits, it shall be conclusively presumed that the medical condition
9 causing the prior permanent disability exists and is disabling at the
10 time of any subsequent industrial injury or occupational disease.
11 Except in the case of total permanent disability, the accumulation of
12 all permanent disability awards issued with respect to any one part of
13 the body in favor of the worker may not exceed one hundred percent over
14 the worker's lifetime. When entering into a voluntary settlement
15 agreement under this chapter, the department or self-insured employer
16 may exclude amounts paid to settle claims for prior portions of a
17 worker's permanent total or partial disability.

18 NEW SECTION. **Sec. 8.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected."

22 Correct the title.

EFFECT: Strikes the underlying bill. Modifies the definition of occupational disease for purposes of industrial insurance to require that the disease arise out of and in the course of the particular employment and meet other criteria. Limits the time for filing occupational disease claims to one year from the earliest date which: The disease or infection was first diagnosed; the worker first received treatment for symptoms of the disease from any health services provider; or the worker was first partially or fully restricted from work due to the disease or infection. Authorizes voluntary settlement agreements regarding any or all aspects of industrial insurance claims under certain conditions.

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