

# SENATE BILL REPORT

## ESB 5566

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As Passed Senate, March 5, 2011

**Title:** An act relating to workers' compensation reform through authorization of voluntary settlements, creation of a return to work subsidy program, and authorization of a study of occupational disease.

**Brief Description:** Reforming workers' compensation through authorization of voluntary settlements, creation of a return to work subsidy program, and authorization of a study of occupational disease.

**Sponsors:** Senators Kohl-Welles and Kline; by request of Governor Gregoire.

**Brief History:**

**Committee Activity:** Labor, Commerce & Consumer Protection: 2/01/11, 2/21/11 [w/oRec].

Passed Senate: 3/05/11, 34-15.

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### SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

**Staff:** Mac Nicholson (786-7445)

**Background:** The state Industrial Insurance Program provides medical and other benefits to workers who suffer a work-related injury or develop an occupational disease. The Industrial Insurance Program is administered by the Department of Labor and Industries (L&I) and is funded through a premium collected from employers and employees in the state. Workers are entitled to workers compensation benefits depending on the type of injury or disease and whether the injury or disease precludes any further gainful employment. Workers do not currently have the option of settling their claim for a lump-sum payment.

Transitional or Light-Duty Work. An employer can offer an injured worker a transitional or light-duty job in order to return the injured worker to work. Prior to employing the injured worker in a transitional or light-duty job, the employer must receive approval from the worker's health care provider. An injured worker who returns to work cannot collect temporary total disability benefits (time-loss), though the worker may be entitled to loss of earning power benefits.

**Summary of Engrossed Bill:** Voluntary Settlement Agreements. Starting September 1, 2011, parties to an allowed claim for workers compensation benefits may enter into a

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voluntary settlement agreement to settle any or all aspects of an allowed claim. Settlement agreements must be submitted to, and approved by, the Board of Industrial Insurance Appeals (BIIA), and become final and binding 30 days after approval, unless any party revokes consent to the settlement. Settlements must be approved if the BIIA finds that the parties have entered into the agreement knowingly and willingly. If the injured worker is unrepresented, a settlement officer at the BIIA must review the settlement agreement, explain to the worker the benefits generally available, ensure the worker has an adequate understanding of the proposal and its consequences, and can approve the settlement only if it is in the best interest of the worker. The legislation provides factors for the settlement officer to consider when making the best interest determination.

Settlement agreements can't be submitted to the BIIA within 12 weeks of injury or disease manifestation, and benefits must be paid during negotiation until the settlement becomes final. In state fund claims L&I negotiates the settlement, and the worker, employer, and L&I are considered parties and must sign the agreement. In self-insured claims, the worker and employer are considered parties.

A settlement agreement can be re-opened for medical treatment only, upon a showing of medical worsening, and if medical benefits are settled, payment must be dispensed pursuant to a schedule of payments reasonably calculated to provide periodic payments throughout the expected time during which the worker will need medical treatment.

L&I must maintain copies of settlements and furnish copies upon request to any party contemplating any subsequent voluntary settlement with the worker on any claim. L&I must also furnish claims histories that include all prior permanent disability awards received by the worker on any claim by body part and category or percentage rating, as applicable. If a worker has received a prior award of, or entered into a settlement for, total or partial permanent disability benefits, it shall be conclusively presumed that the medical condition causing the prior disability exists and is disabling at the time of any subsequent injury or disease. The accumulation of all permanent disability awards issued with respect to any one part of the body may not exceed 100 percent over the worker's lifetime.

Transitional or Light-Duty Work. Return-to-work provisions are amended. An employer may provide light-duty or transitional work to an injured worker without first seeking permission to do so from a health care provider. Temporary total disability payments stop when an injured worker starts light-duty or transitional work.

A state fund employer who offers light-duty or transitional work can seek reimbursement for 50 percent of the injured worker's wages. Reimbursement can be provided for up to 66 work days in a two-year period, and the amount of reimbursement cannot exceed \$10,000 on any claim. Reimbursement is calculated using the worker's basic hourly wage or salary, excluding any other form of compensation to the worker, such as tips, commissions, bonuses, and health care. The worker must actually perform work in order for the employer to claim reimbursement. An employer may also seek reimbursement for training materials, clothes, tools, or equipment provided to the injured worker in order to perform light duty or transitional work.

An employer's experience rating is not affected by the employer's request for or receipt of reimbursement. All reimbursements are paid out of the Washington Stay-at-Work Account, which is funded by assessments collected from state fund employers. Up to one-half of the assessment may be collected from workers.

Study Provisions. L&I is to contract out for the following studies:

- a study of voluntary settlements, every five years until 2026;
- a study of the Stay-At-Work Subsidy Program due in 2016; and
- a study of occupational disease due September 1, 2012.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains an emergency clause and takes effect on July 1, 2011.

**Staff Summary of Public Testimony:** PRO: This bill is a critical part of the Governor's jobs creation package. This bill will reduce costs and provide better outcomes for workers. Changes in the bill will help reduce future rate increases. As a result of this legislation, workers and businesses will have more money to reinvest in the economy. L&I is concerned about long-term pension trends. Washington has some of the longest lasting claims involving time loss compensation. The pieces of this bill are designed to work together. Changing trends around long-term disability is complicated but requires action. The medical provider network, COHE, SHIP program, and wage subsidy pieces all support timely action after injury to get workers back to work while they recover. The pension and award changes work together to redirect more benefits toward better outcomes with the goal of sustaining a system with a high quality benefit package for workers.

CON: The bill contains a number of disparate pathways that don't address the fundamental problem. The COHE expansion and provider network will help lower pension rates and costs. The voluntary settlement piece in the legislation is a bad idea and leads down the slope of compromise and release. The piece cutting off pensions at retirement age is troubling, as you won't know what situation you are putting folks into when cutting off their pension. Pieces of the legislation turn the workers compensation system on its head. Not all individuals will receive social security at retirement age.

OTHER: Businesses are struggling with industrial insurance rate increases. There are pieces of the bill that are good, including the medical provider networks and COHEs, but the benefit increases in the legislation will hurt businesses. Voluntary negotiated settlements should be permitted and is key to lowering costs. The state's system isn't competitive, and has high costs and high benefits.

**Persons Testifying:** PRO: Peter Bogdanoff, Governor's Office; Judy Schurke, L&I.

CON: David Johnson, Washington State Building Trades; Rebecca Johnson, Washington State Labor Council; Sharon Ness, UFCW; Cody Arledge, SMW 66; Nicole Grant, CEWW.

OTHER: Mike Seeger, Fife Flowers; Paulette Gilliardi, Gilliardi Logging; Rick Anderson, Sakuma Bros.; Darren McCallon, True Blue, Inc.; Tina Coakley, Boeing; Donna Egeland, Alaska Airlines, Horizon Air; Katrina Zitnik, Costco Wholesale; Kathy Comfort; Wayne Lieb, Putnam Lieb; Randy Loomans, IUOE 302.