SENATE BILL REPORT
SB 5128

As of January 28, 2013

Title: An act relating to compensation for injured workers.

Brief Description: Addressing compensation for injured workers.

Sponsors: Senators Holmquist Newbry, Braun, King, Baumgartner, Sheldon, Rivers, Ericksen, Benton, Litzow, Becker, Dammeier, Smith, Hill, Bailey, Honeyford, Tom, Schoesler, Parlette, Padden and Hewitt.

Brief History:
Committee Activity: Commerce & Labor: 1/23/13.

SENATE COMMITTEE ON COMMERCE & LABOR

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.

Eligible workers have the option to settle parts of their worker compensation claims through structured settlements. Settlements are available for injured workers older than 55, which will adjust down to 50 and older by 2016. Only allowed claims can be settled, and settlement agreements cannot be initiated until at least 180 days have passed since the order allowing the claim became final and binding. Medical benefits cannot be settled. Unrepresented workers seeking to settle their claims must submit their agreement to, and request a conference with, an industrial appeals judge (IAJ) for approval. Following the conference, the IAJ can approve the settlement only if the settlement is in the best interest of the worker. After the IAJ has approved the agreement, the agreement is forwarded to the Board of Industrial Insurance Appeals (BIIA) for approval. Workers who are represented by an attorney can submit the settlement agreement directly to the BIIA for approval.

The BIIA must approve the agreement unless it finds that the parties have not entered into the agreement knowingly and willingly; the agreement does not meet the requirements of a

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settlement; the agreement is the result of a material misrepresentation of law or fact; the agreement is the result of harassment or coercion; or the agreement is unreasonable as a matter of law.

L&I must maintain copies of all settlement agreements, and provide copies to any party actively negotiating a subsequent settlement agreement.

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 Bill: Voluntary Settlement Agreements. Starting September 1, 2013, parties to an allowed claim for workers compensation benefits may enter into a voluntary settlement agreement to settle any or all aspects of an allowed claim. Settlement agreements must be submitted to, and approved by, the BIIA 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 cannot 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. 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 must 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.

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, 2013.

Appropriation: None.

Fiscal Note: Requested on January 17, 2013.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: The changes to the settlement program will have a big impact on injured workers and on employers. Eliminating the age restriction provides employees with more flexibility to settle their claims. The bill also clarifies that the BIIA does not need to supervise attorneys who act in the best interest of their client. The 2011 reforms were the beginning point of discussions, not the end. Workers unable to return to work should have options and not be stuck in the workers compensation system that effectively bars them from returning to work. Settlements are voluntary, and are under no obligation to pursue them. Employers are facing a decade of rate increases to rebuild the contingency reserve. The ability of L&I to manage claims has gone down. L&I does not focus on getting people back to work. Costs are lower in other states. There is no option to L&I, employers cannot go outside the system. Employees are smart enough to determine what is good for them. Employers have an interest in their employees and providing safe workplaces. Employers do everything they can when employees get hurt to give them care. With increased premiums, employers reduce assistance given to employees, including health care and retirement plans. Costs are driving employers out of the state. These bills are meant to streamline bureaucracy, and help smart people deal with problems. Something needs to be done to fix the system and reduce costs in the system.

CON: Huge changes were made in the workers compensation system in the last two years, many of which are still in progress and are not totally live. It does not make sense to make more changes now while huge reforms are currently being implemented, it will only introduce more chaos into the system. Structured settlement buyouts are almost always a bad deal for workers, because they only save money if the worker settles for less than they are otherwise entitled to. Settlements are not good for workers, their families and communities, or the state. Washington workers have a vested interest in the safety net, and pay into the system. Workers facing long term disability is extremely vulnerable, and in emotional and physical pain. Settlement agreements introduce a financial incentive for profit driven employers to pay as little as possible for injured workers. The savings come directly from injured worker benefits. There is no data to support the change to settlements now, because the reforms have not had enough time to produce results. These reforms will not create jobs, instead they will reduce the incentive for workplace safety and shift the responsibility to tax payers at large, who must help workers who settle for pennies on the dollar. The current system is well run, with relatively low costs for the worker and high benefits for injured workers. The safety net should not be eroded. Settling medical is risky.

OTHER: From an administrative perspective, if both settlement bills pass it would be challenging to implement. Waiving medical as part of a settlement may present challenges. The point at which discussions can begin is different in the settlement options, after 12 weeks and at the six month point. At the six month point, there is more information for the parties to understand the prognosis and the nature of the injury that may not be available at the 12 week point. The focus should be on returning to work at the beginning of a claim. Regarding the age limit, the policy question is at which point does a settlement make sense for the state fund. In the workers compensation system, workers at age 55 are likely to have a less successful outcome than younger workers. The current system might not work as well for workers not looking for a new career start but just want to bridge the gap to retirement. Settling medical benefits may involve Medicare approval for the agreements, which can be a delayed and cumbersome process. There is not a mechanism to deduct future permanent partial disability awards on claims settled by a settlement agreement, and it is not as big a concern for older workers who might not go back to work, but could be for workers more likely to go back to work. Small business owners want to see workers compensation reform, and recommend expanding settlement options. Business owners are desperate for relief, and see expansion of settlement as that relief. Washington is at a competitive disadvantage. Settlements are a popular and proven option, used by many other states.

Persons Testifying: PRO: Glenn Hansen, Multicare Health Systems; Linda Maw, True Blue, Inc.; Tammy Hetrick, WA Retail Assn.; Patrick Connor, National Federation of Independent Business; Darlene Johnson, Woodland Truck Line; Jeff Richter, Chilton Logging; Jerry Murphy, Greenshields Industrial Supply; Andrew Barkis, Hometown Property Management; Dean Hartman, Capitol Business Machines; Merrill Berger, C&C Logging; Chris Gregory; Trent House, Aerospace Futures Alliance; Brad Boswell, Seattle Chamber of Commerce; Scott Dilley, WA Farm Bureau; Kris Tefft, Assn. of WA Business.

CON: Rebecca Johnson, WA State Labor Council; Dave Meyers, WA State Building Trades; Kathy Comfort, WA Assn. for Justice; Geoff Simpson, WA Council of Firefighters; Sharon Ness, UFCW; Nicole Grant, Certified Electrical Workers of WA; Bob Guenther, IBEW; Shawn O'Sullivan, AWPPW; Cody Arledge, Sheet Metal Workers, UFCW; Katherine Mason, WA Assn. for Justice.

OTHER: Joel Sacks, Vickie Kennedy, L&I; Erin Shannon, Washington Policy Center.