

# HOUSE BILL REPORT

## SB 5399

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**As Passed House - Amended:**

April 6, 1995

**Title:** An act relating to refining industrial insurance actions.

**Brief Description:** Refining industrial insurance actions.

**Sponsors:** Senators Pelz and Franklin; by request of Department of Labor & Industries.

**Brief History:**

**Committee Activity:**

Commerce & Labor: 3/22/95, 3/29/95 [DPA].

**Floor Activity:**

Amended.

Passed House: 4/6/95, 96-0.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass as amended. Signed by 10 members: Representatives Lisk, Chairman; Hargrove, Vice Chairman; Thompson, Vice Chairman; Romero, Ranking Minority Member; Conway, Assistant Ranking Minority Member; Cairnes; Cody; Cole; Fuhrman and Goldsmith.

**Staff:** Chris Cordes (786-7117).

**Background:**

**Industrial insurance actions related to out-of-jurisdiction claims**

A worker who is injured outside of the territorial limits of Washington and whose employment is principally located in Washington or is under a contract made in Washington is entitled to benefits under Washington industrial insurance law if the injury is one for which benefits would have been paid had the injury occurred in Washington. However, any payment or award received by the worker under the other jurisdiction's workers' compensation law is offset against the benefits received under Washington law.

**Benefits in case of the injured worker's death**

If an injured worker dies as a result of the industrial injury, burial expenses of \$2,000 are paid and the worker's family receives an immediate payment of \$1,600.

### **Third party actions**

An injured worker, or the Department of Labor and Industries or self-insured employer on behalf of the injured worker, may file a civil action against third parties (not the employer or co-worker) who may be liable for the worker's injuries. The worker is entitled to full benefits under the industrial insurance law and the department or self-insurer has a lien against the third party recovery for benefits that are paid. When benefits are reimbursed from the third party recovery, the department is required to make a retroactive adjustment to the state fund employer's experience rating account.

The Washington Supreme Court has held that the department's right to reimbursement from a third party recovery does not extend to the part of the recovery that is for loss of consortium. The court found that benefits paid under the industrial insurance law do not compensate injured workers for noneconomic damages, such as loss of consortium, and therefore the worker is not obtaining double recovery by retaining both the workers' compensation benefits and the noneconomic damages recovered in the third party action.

If a third party cause of action is settled, the department or the self-insurer must approve any settlement that results in the worker receiving less than he or she is entitled to under the industrial insurance law. "Entitlement" includes benefits paid and payable.

A notice to withhold and deliver property in a collection action related to a lien against a third party recovery must be personally served by the county sheriff's department or by the director's authorized representative.

### **Industrial insurance appeals by health services providers**

A provider who chooses to file an appeal of a Department of Labor and Industries order that demands repayment from the provider must file the appeal within 20 days of the order being communicated to the provider.

### **Summary of Bill:**

#### **Industrial insurance actions related to out-of-jurisdiction claims**

Settlement proceeds and other recoveries that a worker receives under another jurisdiction's workers' compensation law are included as part of the other

jurisdiction's compensation that may be offset against compensation received under Washington's law.

### **Benefits in case of the injured worker's death**

The amount of the benefits paid for burial expenses when an injured worker dies as a result of the industrial injury is changed from \$2,000 to 200 percent of the state's average monthly wage (approximately \$4,250). The immediate payment for the injured worker's family is changed from \$1,600 to 100 percent of the state average monthly wage (approximately \$2,125).

### **Third party actions**

The definition of "recovery" in an action against a third party, for purposes of determining the state fund's or self-insurer's lien against the recovery, includes all damages except loss of consortium.

In a compromise or settlement of a third party action, when written approval of the department of self-insurer is required because the settlement results in less than the worker's entitlement, "entitlement" includes benefits that are estimated by the department to be paid in the future.

The provision is deleted that required the Department of Labor and Industries to make a retroactive adjustment to an employer's experience rating account based on reimbursement from a third party recovery.

Notices to withhold and deliver property in a collection action related to a lien against a third party recovery may, in addition to personal service, be served by certified mail with return receipt requested.

### **Industrial insurance appeals by health services providers**

The time period for health services providers to appeal orders of the Department of Labor and Industries is revised. Health services providers are given a 60-day period to file appeals to department orders unless the order is solely a demand for the repayment of amounts paid to the provider.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** (1) This bill will assist the Department of Labor and Industries and self-insured employers when a settlement results in a deficiency recovery. The department or self-insurer could void the settlement if the recovery fails to account for the future costs that are expected in the claim. This bill also clarifies appeal rights by health care providers, whose period of time in which to file an appeal has been limited by the Board of Industrial Insurance Appeals. Amendments should be added to this bill that would allow a better method to calculate burial benefits if an industrial injury results in the death of an injured worker. (2) The bill should address all noneconomic damages that an injured worker might recover in a third party action, and not provide an exemption for loss of consortium damages. Permitting this exemption from the definition of "recovery" creates an incentive for the parties on both sides of the issue to manipulate settlements and shift the recovery away from economic damages. If this happens, it will complicate settlements to the detriment of the premium payers. (3) The logic behind the lien statute is to protect against double recoveries. Because workers' compensation does not cover every kind of loss suffered by the worker, it is fair that some parts of a third party recovery should not be subject to the department's lien. The department or self-insurer already has the right to void a settlement when it is deficient. However, these procedures are particularly important when the injured party is not represented by counsel. The bill should allow parties who are represented to make whatever settlement fits their circumstances. Allowing the settlement to be voided simply forces an expensive trial without any risk to the department or self-insurer.

**Testimony Against:** None.

**Testified:** (In favor) Mike Watson, Department of Labor and Industries. (In favor, with amendments) Lee Eberle, Washington Self-Insurers Association; Clif Finch, Association of Washington Business; and Wayne Lieb, Washington State Trial Lawyers Association.