

# SENATE BILL REPORT

## SB 5509

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As Reported by Senate Committee On:  
Commerce & Labor, January 27, 2016

**Title:** An act relating to workers' compensation reform through clarification of occupational disease claims.

**Brief Description:** Concerning workers' compensation reform through clarification of occupational disease claims.

**Sponsors:** Senators Braun, Baumgartner, Rivers, Angel, Bailey, Warnick, Honeyford and Parlette.

**Brief History:**

**Committee Activity:** Commerce & Labor: 2/09/15, 2/11/15 [DPS, DNP]; 1/27/16 [DPS, DNP].

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### SENATE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** That Substitute Senate Bill No. 5509 be substituted therefor, and the substitute bill do pass.

Signed by Senators Baumgartner, Chair; Braun, Vice Chair; King and Warnick.

**Minority Report:** Do not pass.

Signed by Senators Hasegawa, Ranking Minority Member; Conway and Keiser.

**Staff:** Susan Jones (786-7404)

**Background:** Under the state's industrial insurance laws, workers who, in the course of employment, are injured or disabled from an occupational disease are entitled to benefits. Depending on the disability, workers are entitled to medical, temporary time-loss, and vocational rehabilitation benefits, as well as benefits for permanent disabilities.

Occupational disease is defined in the industrial insurance statutes as a "disease or infection as arises naturally and proximately out of employment under the mandatory or elective adoption provisions of this title." The statute of limitations for most occupational disease claims is two years and starts on the date the worker receives written notice from a physician or licensed advanced registered nurse practitioner of the existence of an occupational disease, and that a claim for benefits may be filed. The medical provider must send a copy of the

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notice to the Department of Labor and Industries, who must then send a copy to the worker and to the self-insured employer, if appropriate.

A claim is valid if filed within two years of the date of death of a worker suffering from an occupational disease.

On claims for hearing loss due to occupational noise exposure, the two-year statute of limitations starts on the date of the worker's last injurious exposure to occupational noise. A claim for hearing loss due to occupational noise exposure that is not filed within the two-year statute of limitations may be allowed for medical benefits only.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Recommended Substitute):** The statutory definition of occupational disease is changed, so that an occupational disease must arise out of and in the course of the particular employment in which the worker is exposed to the disease and which meets a four-part test:

- the disease is proximately caused by the distinctive conditions under which the work is performed and risk of exposure inherent therein;
- the disease arose as a natural incident of the employment-related exposure;
- the worker would not have ordinarily been exposed to the disease outside of the worker's employment; and
- the disease is not an ordinary condition of life to which the general public is exposed without regard to employment.

Proximate cause is defined as the cause which, in a direct sequence, unbroken by any new, independent cause, produces the disease and without which the disease would not have occurred.

The statute of limitations on most occupational disease claims is changed from two years to one year. The statute of limitations starts on the date the disease was first diagnosed, the date the worker first received treatment for symptoms of the disease from any health services provider, or the date the worker was first restricted from work due to the disease, whichever is earliest.

On claims for hearing loss, the two-year statute of limitations remains in place, and a claim not filed within two years is not allowed.

**Appropriation:** None.

**Fiscal Note:** Available.

**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: This bill gets closer to the original intent of occupational disease coverage in the workers' compensation system. There has been an

erosion of the standard over time, primarily by the judiciary, which has shifted traditional health care costs into the workers' compensation system. Tightening the definition of occupational disease clarifies original legislative intent and puts occupational back into occupational disease coverage.

CON: The bill unnecessarily narrows the window for occupational claims from two years to one year. The two-year window is prudent and shouldn't be further restricted. The proposal would create three triggers for the clock to start running, and there are instances where it could take time for a disease to manifest itself after the worker gets initial treatment which would be barred under the bill. Occupational diseases are not conditions that are normally apparent to the worker. It can be difficult for a worker to know a condition is work connected within one year.

**Persons Testifying:** PRO: Carolyn Logue, WA Food Industry Assn.; Kris Tefft, WA Self-Insurers Assn.

CON: Dustin Daily, WA State Assn. for Justice; Joe Kendo, WA State Labor Council.

**Persons Signed In To Testify But Not Testifying:** No one.