

HOUSE BILL REPORT

SHB 1732

As Passed House:

March 10, 2005

Title: An act relating to allowing additional industrial insurance benefits when social security benefits are reduced.

Brief Description: Allowing additional industrial insurance benefits when social security benefits are reduced.

Sponsors: By House Committee on Commerce & Labor (originally sponsored by Representatives Conway, McCoy, Wood, Chase, Campbell and Santos).

Brief History:

Committee Activity:

Commerce & Labor: 2/14/05, 3/1/05 [DPS].

Floor Activity:

Passed House: 3/10/05, 92-0.

Brief Summary of Substitute Bill

- Requires the Department of Labor and Industries (Department) or self insurer, after a request and where appropriate, to recalculate an injured worker's compensation benefits and pay additional benefits to the worker if a reduction in federal social security disability entitlement is made retroactively for a time period during which benefits were also reduced under Washington's industrial insurance law.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Sump, Assistant Ranking Minority Member; Crouse, Hudgins and McCoy.

Staff: Chris Cordes (786-7103).

Background:

In 1956, when the Congress enacted the federal social security disability program, it included provisions to coordinate benefits received under more than one disability program. Social security disability benefits for persons under age 62 were reduced by the full amount of state

or federal workers' compensation benefits also being paid to the individual. This offset provision was repealed in 1958, but reenacted again in 1965.

The 1965 social security disability benefit provisions raised the age limit to age 65 and included a "reverse offset" that permits the benefit reduction to be taken by a state's workers' compensation program rather than by the federal disability program. However, in 1981, federal law was amended to allow a state to take the reverse offset only if the state had provided for a reverse offset as of February 18, 1981.

Washington permitted this reverse offset beginning in 1975. When Washington's law was enacted, it applied to persons under age 62 who were receiving social security disability payments. In 1983, this age limit was raised to age 65 to correspond to the age limit change in federal law for social security disability payments.

According to the Social Security Administration (SSA), the SSA is not permitted by federal law to recognize any extensions of a reverse offset provision that a state enacted after 1981. For example, the SSA does not recognize Washington's change in the law allowing a reverse offset after age 62 and will reimpose the SSA offset beginning at age 62 for social security disability beneficiaries.

Summary of Substitute Bill:

Adjustments to workers' compensation benefits must be made if the federal Social Security Administration (SSA) makes a retroactive reduction in a worker's federal social security benefits for periods when time-loss or pension benefits were also paid to the worker and for which the Department of Labor and Industries (Department) or self-insurer also offset benefits to account for social security benefits. To request the adjustment, the worker must submit a written request, along with satisfactory documentation of an SSA overpayment assessment. As appropriate, the Department or self-insurer must make changes in the offset calculations and pay additional benefits to the worker.

These additional benefits are paid without interest and without regard to whether the worker's claim is closed. This action does not affect the status of the claim or the date of claim closure.

These provisions apply only to requests for adjustments that are submitted before July 1, 2007, and do not apply to requests on claims for which a final determination in response to a request has been made.

By December 1, 2006, the Department must report to the appropriate committees of the Legislature on these benefit adjustments, including information about similar benefit adjustments in other states and recommendations on whether additional statutory changes might be warranted in light of actions by the SSA.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) Several injured worker clients have been placed in an unfortunate situation by the federal Social Security Administration. Washington amended its offset law to apply up to age 65 to keep up with the federal law, but the SSA refuses to recognize the state's right to offset after age 62. This interpretation was not enforced for many years, but now the SSA is going back to old claims, sometimes as much as 10 years later. This bill allows the Department to refund the state offset when the SSA retroactively applies its offset. These workers are usually living on fixed incomes and may be subject to a large overpayment assessment that they cannot pay back.

(With concerns) This change could result in large costs to the system and an impact on the reserves. The impact will not be fully understood until the SSA finishes it auditing. It raises concerns about the finality of claims closure. The bill could be improved by requiring notification from the SSA before the recalculation process is applied to a claim. This process needs to have some parameters around it, and there needs to be a method of ensuring that the federal overpayment gets paid. This bill may have implications for the "change of circumstances" statute. It is not clear how this new cost will be covered, unless the cost is socialized to the system.

(Neutral) The audits are only concerned with the offsets taken between age 62 and 65. The Department can address issues in open claims, but this bill gives the Department authority to address closed claims.

Testimony Against: None.

Persons Testifying: (In support) David Lauman, Washington State Trial Lawyers Association.

(With concerns) Amber Carter, Association of Washington Business; Rick Slunaker, Associated General Contractors; and Carolyn Logue, National Federation of Independent Business.

(Neutral) Vickie Kennedy, Department of Labor and Industries.

Persons Signed In To Testify But Not Testifying: None.