

SENATE BILL REPORT

SB 5125

As of February 5, 2014

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

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

Sponsors: Senators Holmquist Newbry, Braun, King, Baumgartner, Rivers, Ericksen, Benton, Bailey, Becker, Schoesler, Honeyford and Hewitt.

Brief History:

Committee Activity: Commerce & Labor:

SENATE COMMITTEE ON COMMERCE & LABOR

Staff: Mac Nicholson (786-7445)

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 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

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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 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 all occupational disease claims is changed from two years to one year. The statute of limitation 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.

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: There is a concern that costs from outside the workplace are shifted to inside the workplace by liberal coverage of what is considered an occupational disease. The occupational disease definition has been expanded by judicial decisions and loosening claims interpretations. Many people have degenerative issues resulting from outside activities that are not work related or result from normal aging processes. This bill tightens the application of occupational disease. This bill is a long overdue reform. Occupational disease claims are the most expensive claims. This bill will help reduce litigation. The current two-year standard is not a high standard; the new language comes from Oregon where it has been tried and tested.

CON: This bill would allow cost shifting away from the industrial insurance system and onto other social services. This bill would set a nearly impossible test when suffering from an occupational disease. Under the bill the clock to file a claim starts running at first treatment, which could be well before the condition develops into an occupational disease. The bill will deny injured workers and their families the benefits they need right out of the gate. Certain workers may be exposed to a variety of conditions where the public is also

exposed, and the bill would prevent recovery for those bills. Some occupational diseases have long development or latency periods which will not show up in the one-year period.

OTHER: There was a study that looked at occupational disease but did not include recommendations because they were not asked for. There are seven to eight pages of conclusions in the study. There is not a right or wrong approach to occupational disease; it is a public policy call for the Legislature.

Persons Testifying: PRO: Carolyn Logue, WA Food Industry Assn.; Kris Tefft, Assn. of WA Business; Kathleen Collins, WA Self-Insurers Assn.; Tammie Hetrick, WA Retail Assn.

CON: Sharon Ness, United Food and Commercial Workers, United Council Locals 367, 365, 1439; Jon Stubbs, WA State Assn. for Justice; Joe Kendo, WA State Labor Council; Michael White, WA State Council of Fire Fighters; David Myers, WA State Board for Community and Technical Colleges.

OTHER: Vickie Kennedy, Labor and Industries.