

SENATE BILL REPORT

SB 5126

As Reported by Senate Committee On:
Commerce & Labor, January 28, 2013

Title: An act relating to recovery for purposes of legal actions under the industrial insurance statutes.

Brief Description: Concerning recovery for purposes of legal actions under the industrial insurance statutes.

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

Brief History:

Committee Activity: Commerce & Labor: 1/23/13, 1/28/13 [DP, DNP].

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass.

Signed by Senators Holmquist Newbry, Chair; Braun, Vice Chair; Hewitt and King.

Minority Report: Do not pass.

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

Staff: Mac Nicholson (786-7445)

Background: Under the state industrial insurance laws, a worker injured on the job will receive workers' compensation benefits, even if the employer was not liable for the injury. In cases where a third party caused the injury, the injured worker, or the Department of Labor and Industries (L&I) and/or the self-insured employer (SIE), can sue the third party for damages. L&I and the SIE have a statutory right to use parts of any amount recovered in a third-party suit to reimburse the state fund and/or the SIE for benefits paid out to the injured worker. State law provides a specific formula to be used when distributing any third-party recovery, and damages for loss of consortium are excluded from the distribution formula.

The industrial insurance third-party recovery statutes were the subject of the 2010 state Supreme Court decision *Tobin v. the Department of Labor and Industries*. Tobin was injured at work by a third party, opened a workers compensation claim and received benefits, and brought a lawsuit against the third party responsible for the accident, settling for \$1.4 million

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in damages, of which \$793,000 was categorized as damages for pain and suffering. L&I sought to distribute Tobin's entire \$1.4 million award pursuant to the third-party recovery formula. Tobin, and ultimately the Supreme Court, disagreed with L&I's position, finding that L&I could only seek reimbursement for benefits paid, and L&I never paid pain and suffering benefits. According to the court, the amount included in the settlement as damages for pain and suffering should be excluded from the reimbursement calculation.

Summary of Bill: All economic and noneconomic damages, except loss of consortium, are subject to the third-party recovery statutes.

The legislation provides that it is an explicit restatement of the Legislature's original intent to grant L&I or a SIE the authority to reimburse itself from a third-party recovery for the amount paid on behalf of the worker or beneficiary for all economic and noneconomic damages, except loss of consortium.

The legislation applies to all causes of action commenced on or after the effective date of the act, regardless of when the cause of action arose.

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: The 2011 reforms were the beginning point of discussions, not the end. 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. 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.

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. Washington workers have a vested interest in the safety net, and pay into the system. The savings come directly from injured worker benefits. 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.

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, United Food and Commercial Workers (UFCW); Nicole Grant, Certified Electrical Workers of WA; Bob Guenther, International Brotherhood of Electrical Workers; Shawn O'Sullivan, Assn. of Western Pulp and Paper Workers; Cody Arledge, Sheet Metal Workers, UFCW; Katherine Mason, WA Assn. for Justice.