

# SENATE BILL REPORT

## ESSB 5127

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As Passed Senate, February 4, 2013

**Title:** An act relating to amending provisions governing structured settlements by removing age barriers and clarifying legislative intent.

**Brief Description:** Amending provisions governing structured settlements by removing age barriers and clarifying legislative intent.

**Sponsors:** Senate Committee on Commerce & Labor (originally sponsored by Senators Holmquist Newbry, Tom, King, Sheldon, Baumgartner, Ericksen, Rivers, Litzow, Benton, Dammeier, Carrell, Braun, Bailey, Honeyford, Becker, Hill, Roach, Schoesler, Parlette, Padden and Hewitt).

**Brief History:**

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

Passed Senate: 2/04/13, 30-19.

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### SENATE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** That Substitute Senate Bill No. 5127 be substituted therefor, and the substitute bill 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:** Workers who, in the course of employment, are injured or disabled from an occupational disease are entitled to industrial insurance benefits. Depending on the disability, workers are entitled to medical, temporary time-loss, and vocational rehabilitation benefits, as well as benefits for permanent disabilities. Eligible workers have the option to settle parts of their worker compensation claims through structured settlements. Settlements are available for injured workers older than 55, which will adjust down to 50 and older by 2016. Medical benefits cannot be settled.

Unrepresented workers seeking to settle their claims must submit their agreement to, and request a conference with, an industrial appeals judge (IAJ) for approval. Following the

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conference, the IAJ can approve the settlement only if the settlement is in the best interest of the worker. After the IAJ has approved the agreement, the agreement is forwarded to the Board of Industrial Insurance Appeals (BIIA) for approval. Workers who are represented by an attorney can submit the settlement agreement directly to the BIIA for approval.

The BIIA must approve the agreement unless it finds that the parties have not entered into the agreement knowingly and willingly; the agreement does not meet the requirements of a settlement; the agreement is the result of a material misrepresentation of law or fact; the agreement is the result of harassment or coercion; or the agreement is unreasonable as a matter of law.

In April 2012, the BIIA issued a decision involving a settlement agreement submitted by a represented worker *In re: Zimmerman*. The BIIA rejected the agreement, finding it did not have enough information to determine whether the agreement was in the best interest of the worker. In reaching their decision, the BIIA found that a best interest determination is a requirement of a settlement agreement, and without a determination, the BIIA cannot approve an agreement for represented or unrepresented workers. The Zimmerman decision was appealed, and is now working its way through the court system.

**Summary of Engrossed Substitute Bill:** Structured settlements are available for workers who are at least 40 years of age.

A best interest determination is not a requirement of a settlement agreement for represented workers.

The legislation states that it is a clarification of the Legislature's original intent, and applies retroactively.

**Appropriation:** None.

**Fiscal Note:** Requested on January 17, 2013.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony on Original Bill:** PRO: The changes to the settlement program will have a big impact on injured workers and on employers. Eliminating the age restriction provides employees with more flexibility to settle their claims. The bill also clarifies that the BIIA does not need to supervise attorneys who act in the best interest of their client. The 2011 reforms were the beginning point of discussions, not the end. Workers unable to return to work should have options and not be stuck in the workers' compensation system that effectively bars them from returning to work. Settlements are voluntary, and workers are under no obligation to pursue them. Employers are facing a decade of rate increases to rebuild the contingency reserve. The ability of the Department of Labor and Industries (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. There is no alternate option to L&I, employers cannot go outside the system. Employees are smart enough to determine what is

good for them. 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. Something needs to be done to fix the system and reduce costs in the system.

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. Doing this will only introduce more chaos into the system. Structured settlement buyouts are almost always a bad deal for workers, because they only save money if the worker settles for less than they are otherwise entitled to. Settlements are not good for workers, their families and communities, or the state. Washington workers have a vested interest in the safety net, and pay into the system. Workers facing long-term disability are extremely vulnerable and in emotional and physical pain. Settlement agreements introduce a financial incentive for profit-driven employers to pay as little as possible for injured workers. The savings come directly from injured worker benefits. There is no data to support the change to settlements now, because the reforms have not had enough time to produce results. 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. The safety net should not be eroded. Settling medical is risky.

OTHER: From an administrative perspective, if both settlement bills pass it would be challenging to implement. Waiving medical as part of a settlement may present challenges. The point at which discussions can begin is different in the settlement options, after 12 weeks and at the six month point. At the six month point, there is more information for the parties to understand the prognosis and the nature of the injury that may not be available at the 12 week point. The focus should be on returning to work at the beginning of a claim. Regarding the age limit, the policy question is at which point does a settlement make sense for the state fund. In the workers' compensation system, workers at age 55 are likely to have a less successful outcome than younger workers. The current system might not work as well for workers not looking for a new career start but just want to bridge the gap to retirement. Settling medical benefits may involve Medicare approval for the agreements, which can be a delayed and cumbersome process. There is not a mechanism to deduct future permanent partial disability awards on claims settled by a settlement agreement, and it is not as big a concern for older workers who might not go back to work, but could be for workers more likely to go back to work. Small business owners want to see workers' compensation reform, and recommend expanding settlement options. Business owners are desperate for relief, and see expansion of settlement as that relief. Washington is at a competitive disadvantage. Settlements are a popular and proven option, used by many other states.

**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.

OTHER: Joel Sacks, Vickie Kennedy, L&I; Erin Shannon, WA Policy Center.