

# SENATE BILL REPORT

## SB 5508

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As Reported by Senate Committee On:  
Commerce & Labor, February 11, 2015

**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 Braun, Baumgartner, Rivers, Dammeier, Schoesler and Bailey.

**Brief History:**

**Committee Activity:** Commerce & Labor: 2/02/15, 2/11/15 [DP, DNP].

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### SENATE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** 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:** 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 in damages, of which \$793,000 was categorized as damages for pain and suffering. L&I

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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 an 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: This bill doesn't take away benefits from an individual. Workers will still get their benefits and can get more depending on the recovery. This bill brings the law back to its current intent.

CON: Pain and suffering benefits can only be obtained through a lawsuit since L&I doesn't pay those benefits. It's a matter of fundamental fairness and justice that workers keep their pain and suffering awards.

**Persons Testifying:** PRO: Christine Brewer, WA Self Insurers Assn.; Bob Battles, Assn. of WA Business.

CON: David Laumann, WA State Assn. for Justice; Joe Kendo, WA State Labor Council, AFL-CIO.