HOUSE BILL REPORT

ESB 5603

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to the definition of "acting in the course of employment" for industrial insurance.

Brief Description: Amending the definition of acting in the course of employment.

Sponsors: Senators Newhouse, Vognild, Anderson, Amondson, Prince, Prentice and Winsley.

Brief History:
Reported by House Committee on:
Commerce & Labor, February 25, 1994, DP.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 7 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Lisk, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Horn; Springer and Veloria.

Minority Report: Without recommendation. Signed by 2 members: Representatives Conway and King.

Staff: Chris Cordes (786-7117).

Background: To be entitled to industrial insurance benefits, a worker must be injured while "acting in the course of employment." A worker is acting in the course of employment if he or she is acting at the employer's direction or in furtherance of the employer's business.

Generally, a worker is not considered to be in the course of employment while on a recreational excursion which is not incident to employment or in furtherance of the employer's interests. The Board of Industrial Insurance Appeals has held that workers playing on company softball or football teams are not in the course of employment if (1) the employer provided no financial support to the team, other than league entry fees, (2) the employer exerted no control over the players, (3) players were not paid for their time, (4) games were played off company premises and during nonwork hours, and (5) the company name was not used on team

uniforms and no business was solicited through the team's participation in the league.

Summary of Bill: For the purposes of coverage for industrial insurance benefits, an employee is not "acting in the course of employment" while participating in a voluntary recreational activity even if the employer promoted or sponsored the activity, unless the employee is directly ordered to participate or is paid wages or travel expenses while participating. Health or wellness programs sponsored and required by the employer are not considered voluntary recreational activities.

Fiscal Note: Available.

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

Testimony For: Whether workers are covered under workers' compensation when they participate in recreational activities is a gray area of the law. Employers may support the activities by buying uniforms, hiring referees, and paying other expenses related to sports, tournaments, or company picnics. Employers view this as a benefit to their employees, but the employers should not be liable for workers' compensation for these activities unless the business is benefiting. Employers may have to be advised to stop supporting these activities because of the potential workers' compensation liability. Employers also acknowledge the potential for personal injury law suits if the activities are excluded from workers' compensation.

Testimony Against: Many companies sponsor voluntary exercise programs for workers. Injuries can occur during these activities and the injuries should be covered under workers' compensation. Sometimes these activities are not really voluntary because a message is conveyed to the worker that attendance is expected. An injury in an exercise program or recreational activity can be just as costly to the worker as an injury that occurred on the job. The Board of Industrial Insurance Appeals has dealt with this issue over the years and uses several tests to decide these cases.

Witnesses: (In favor) Melanie Stewart, Washington Self-Insurers Association; Dave Ducharme, Kaiser Aluminum; and Clif Finch, Association of Washington Business. (Opposed) Robby Stern, Washington State Labor Council; and Wayne Lieb, Washington State Trial Lawyers Association.