

HOUSE BILL REPORT

HB 2851

As Passed House
February 9, 1994

Title: An act relating to waiver of injunction bonds if a person's health or life would be jeopardized.

Brief Description: Allowing courts to waive injunction bonds if a person's health or life is jeopardized.

Sponsors: Representatives Appelwick, Morris, J. Kohl, Veloria, Caver and King; by request of Insurance Commissioner.

Brief History:

Reported by House Committee on:
Judiciary, February 2, 1994, DP;
Passed House, February 9, 1994, 95-0.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 15 members:
Representatives Appelwick, Chair; Johanson, Vice Chair;
Padden, Ranking Minority Member; Ballasiotes, Assistant
Ranking Minority Member; Campbell; Chappell; Eide; Forner;
J. Kohl; Long; Morris; H. Myers; Schmidt; Scott and Tate.

Staff: Bill Perry (786-7123).

Background: A party in a lawsuit will sometimes seek to enjoin another party from taking or continuing a course of conduct and may ask for an injunction while the lawsuit is being heard. Under the general statutory provisions covering injunctions, the party seeking the injunction must show that an injunction is necessary to prevent "great injury." Issuance of an injunction is an equitable matter, and courts may exercise broad discretion in deciding whether to issue one. If an injunction is granted under the general statute, the party seeking it must post a bond pending the resolution of the issue in the lawsuit. The bond is to cover damages caused by the injunction in the event the party seeking the injunction loses the lawsuit. Some specific statutory authorizations of injunctive relief dispense with a bond requirement, often particularly when a government agency is seeking the injunction.

The amount of damages that a party may recover for having been wrongly enjoined is limited to the amount of the bond. Absent a showing that an injunction was maliciously sought, if there is no bond the party against whom the injunction was improperly issued cannot recover damages. Venegas v. United Farm Workers, 15 Wn. App. 863 (1976).

In some instances, such as injunctions affecting public construction contracts, statutory directives exist regarding the amount of the bond to be required. Under the general statute, however, the court has broad discretion in setting the amount of a bond. Nonetheless, the bond requirement under this general injunction statute is mandatory, and a bond of some amount must be imposed whenever an injunction is issued. Failure to impose a bond invalidates an injunction. Irwin v. Estes, 77 Wn.2d 285 (1969).

Injunctions are sought in a wide variety of cases. At least 300 sections of the Revised Code of Washington refer to "injunctions," and reported court decisions under the general injunction statute indicate that injunctions are sought in many kinds of lawsuits. Cases involve land use issues, business transactions, construction projects, domestic relations, labor relations, health care and every other field of law. Some of these cases may involve direct or indirect allegations of potential danger to a person's life or health. For instance, in the Irwin case the proposed "Sky River Rock Festival and Lighter Than Air Fair" would have resulted in "Thirty or forty trains a day running at speeds of up to 75 miles per hour night and day through fields occupied by thousands of people." An injunction was granted but invalidated on appeal for lack of a bond.

The state insurance commissioner's office indicates that posting a bond can be a hardship on a patient seeking an injunction against an insurer in a case where a dispute arises over health insurance coverage.

Summary of Bill: The requirement of posting a bond may be waived by a judge when issuing an injunction if "a person's health or life would be jeopardized."

Fiscal Note: Not requested.

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

Testimony For: The bond requirement can be an unfair hardship on seriously ill people. Judges should have the discretion to waive the bond.

Testimony Against: None.

Witnesses: Deborah Senn, Insurance Commissioner (pro).