

SENATE BILL REPORT

HB 2851

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, FEBRUARY 24, 1994

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

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

HOUSE COMMITTEE ON JUDICIARY

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators A. Smith, Chairman; Ludwig, Vice Chairman; Hargrove, Nelson, Roach and Schow.

Staff: Dick Armstrong (786-7460)

Hearing Dates: February 24, 1994

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.

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).

Under the general statute, 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).

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:

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."

Appropriation: none

Revenue: none

Fiscal Note: none requested

TESTIMONY FOR:

Some insurance companies deny health care coverage when serious illnesses are in question. Sick people often file injunctions to protect themselves. Courts should have discretion to waive the bond when health care is the issue. Bond requirements can be significant and many patients cannot afford the cost of a bond.

TESTIMONY AGAINST: None

TESTIFIED: Deborah Senn, Insurance Commissioner; Richard Spoonmore, attorney