

HOUSE BILL REPORT

HB 1378

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to compensation for occupational disease.

Brief Description: Limiting compensation for occupational disease not fully caused by covered occupational exposure.

Sponsors: Representatives Lisk, Chandler, Fuhrman, Goldsmith, Horn and Hargrove.

Brief History:

Committee Activity:

Commerce & Labor: 1/30/95, 2/9/95 [DPS].

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Lisk, Chairman; Hargrove, Vice Chairman; Thompson, Vice Chairman; Cairnes; Fuhrman and Goldsmith.

Minority Report: Do not pass. Signed by 4 members: Representatives Romero, Ranking Minority Member; Conway, Assistant Ranking Minority Member; Cody and Cole.

Staff: Chris Cordes (786-7117).

Background: The industrial insurance law provides compensation to workers who develop occupational diseases from injurious exposure in covered employments. If a worker has been exposed in more than one employment covered by industrial insurance, then liability for benefits is determined under the "last injurious exposure" rule. The last injurious exposure rule allocates liability between the Department of Labor and Industries (state fund) and a self-insured employer based on which insurer was the last insurer covering the risk during the most recent exposure that caused the disability.

In a case involving injurious exposure while the worker was both in employment covered by the state fund and in uncovered self-employment, the Washington Supreme Court held that the last injurious exposure rule did not prevent a claim against the state fund even though the worker's last injurious exposure was during self-

employment not covered by industrial insurance. The court determined that in these cases the last covered employer is liable for benefits rather than the last employer in time.

Summary of Bill: If a worker's occupational disease is caused in part by occupational exposure not covered under industrial insurance, then the worker or worker's beneficiaries are entitled to benefits only to the extent that the exposure in covered employment contributed to the development of the disease.

A presumption is created that the amount that an injurious occupational exposure contributed to an occupational disease is in proportion to the period of exposure in covered employment compared to the total period of injurious exposure from all occupational sources.

Substitute Bill Compared to Original Bill: In the original bill, nonoccupational injurious exposure was to be considered in determining the period of liability for a covered employer. The substitute bill removes all references to nonoccupational exposure and addresses only the relationship between injurious exposure in covered employment and injurious exposure in employment that is not covered by the industrial insurance law.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This bill is intended to correct an inequity arising out of a court case. In that case, a worker was covered under industrial insurance for two years, and then as a self-employed person chose not to cover himself for the next 21 years. But the court decided that the employer of two years was fully liable for the occupational disease. This bill would not deny that state fund claim entirely, but would require the compensation to be in proportion to exposure in covered employment. Sole proprietors who decide not to be covered should have to assume some of the risk.

Testimony Against: The inclusion of nonoccupational exposure in the bill may cause increased litigation because of allegations of exposure in normal routine activities away from work. Also, some employees are finding themselves uncovered when they are told that they must be independent contractors to get a job. The bill is overly broad when it covers both of these situations which were not dealt with in the court case. The bill is not clear about how liability is to be assessed when several employers are involved. Workers should not be held accountable for toxic worksites

that they cannot control. It will be impossible for workers to prove that exposure at home did not contribute to the disease.

Testified: (In favor) Melanie Stewart and David Ducharme, Washington Self-Insurers Association; and Clif Finch, Association of Washington Business. (Opposed) Robert Dilger, Washington State Building and Construction Trades Council; Robby Stern, Washington State Labor Council; Joe Albo, Washington State Trial Lawyer's Association; and Sue Whitehead.