HOUSE BILL REPORT
HB 3031

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to defining misconduct for unemployment insurance purposes.

Brief Description: Defining misconduct for unemployment insurance purposes.

Sponsors: Representatives McMorris, Boldt, Chandler and Clements.

Brief History:
Committee Activity:
Commerce & Labor: 2/4/98, 2/5/98 [DP].

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 5 members: Representatives McMorris, Chairman; Honeyford, Vice Chairman; Boldt; Clements and Lisk.

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

Staff: Pam Madson (786-7166).

Background: A person claiming unemployment insurance benefits is disqualified if he or she was discharged or suspended by the employer for misconduct connected with the work. The claimant is disqualified for five weeks and until he or she works and earns a specified amount of wages.

Since 1993, "misconduct" has been defined as an employee's act or failure to act in willful disregard of the employer's interest where the effect is to harm the employer's business.

Before the 1993 amendment, "misconduct" was not defined in the statute, but was interpreted through court cases. The Washington Supreme Court used the following test for on-the-job misconduct: (1) the employer's rule that was violated was reasonable under the circumstances of the employment; (2) the violative conduct was connected with work; (3) the employee's conduct violated the rule; and (4) the violations were intentional, grossly negligent, or continued to take place after notice or warnings, and

the conduct was not mere incompetence, inefficiency, erroneous judgment, or ordinary negligence.

For off-the-job misconduct, the court also required a showing that the conduct resulted in some harm to the employer's interest and was done with the intent or knowledge that the employer's interest would suffer.

Summary of Bill: The definition of misconduct for purposes of unemployment insurance is modified. Language is deleted that required the employee to act in willful disregard of the employer's interest with the effect being to harm the employer's business. New provisions are added that define on-the-job misconduct and off-the-job misconduct.

On-the-job misconduct is an employee's act or failure to act that violates a reasonable rule, order or standard of behavior of the employee's employer and that is connected with the employee's work. It does not include an employee's conduct that is a result of incompetence, inefficiency, erroneous judgment, or ordinary negligence.

Off-the-job misconduct is an employee's act or failure to act that: (1) violates a reasonable rule, order or standard of behavior of the employee's employer; (2) is connected with the employee's work or has a reasonable relation to the conduct of the employer's business; (3) results in some harm to the employer's interest; and (4) was done with the knowledge that the employer's interest would be harmed.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill attempts to reinstate the test for determining misconduct under the Macy decision that existed prior to 1993 when a definition of misconduct was enacted. The test for misconduct under the current statute requires harm to the employer. Employers should not have to wait for harm to occur before an employee is discharged for misconduct with the result that the employee is not eligible for unemployment benefits. Employee conduct that is outside the bounds of normal and reasonable behavior, even if it is not wilful should be considered misconduct. It is still very clear that ordinary negligence, errors in judgement, and incompetence are not misconduct. A determination of misconduct may go through a series of decisions that finds misconduct and then that finding is overturned. This leaves everyone unsure over what is or is not misconduct under current legislation. The test for off-the-job misconduct under this bill is virtually the same as the test we have now. It requires harm to the employer.

Testimony Against: A person's penalty for being fired for misconduct is not only losing a job but being barred from receiving any unemployment insurance benefits until the person re-qualifies. This state operated for many years under a rule that set a fairly high standard because of the penalty involved. There had to be intentional conduct and there had to be harm to the employer. Under two court cases a new test for misconduct included a violation of a reasonable employer rule. The courts have not defined what is a reasonable rule nor have the courts set any parameter around these rules. The rules don't get applied consistently in the workplace. The Legislature in 1993 returned to a high standard by adopting the rule that includes harm to the employer. Under recent court cases interpreting the current statute, harm to the employer need not be economic harm. It can be tangible harm or intangible harm. Establishing harm to the employer is not that difficult under current law. Under this bill, there is no guidance for the term "standards of behavior." The test proposed is inflexible and the broad scope of off-the-job conduct could intrude on the private lives of workers.

Testified: (In favor) Clif Finch, Association of Washington Business; Norm Rafel, Association of Washington Business; Dale Toovey, Washington Hospital Services; and Jack McGil, Simpson Timber Company. (Opposed) Jeff Johnson, Washington State Labor Council; Pam Crone, Unemployment Law Project; Robert Dilger, Washington State Building and Construction Trades Council; and Alan Darr, International Union of Operating Engineers. (Neutral) Dale Zeigler and Graeme Sackrison, Employment Security Department.