HOUSE BILL REPORT
HB 1691

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to restricting actions against employers under industrial insurance.

Brief Description: Restricting actions against employers under industrial insurance.

Sponsors: Representatives McMorris, Mitchell, Honeyford, Lisk and Mulliken.

Brief History:
Committee Activity:
Commerce & Labor: 2/17/97, 3/3/97 [DPS].

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill 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: Chris Cordes (786-7103).

Background: Generally, a worker is compensated under the industrial insurance law for injuries that occur in the course of employment and is not permitted to bring a civil action against his or her employer for that injury. However, if the injury results from the deliberate intention of the employer to produce the worker's injury, the worker is permitted a cause of action for damages in excess of the benefits paid under the industrial insurance law.

What constitutes "deliberate intention" of an employer has been discussed in several Washington appellate court cases. A 1995 Washington Supreme Court decision reviewed previous cases that had required a specific intent to injure the worker by the employer. The court then held that "deliberate intention" means that the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge.

Summary of Substitute Bill: The Legislature finds that the historic covenant between workers and employers that resulted in the industrial insurance system will not be maintained unless worker law suits against employers are limited to situations in which the employer determined to injure the worker.

To show "deliberate intention" to injure a worker, the court must find that the employer had specific intent to injure the worker. The employer has the specific intent required if the employer acts with the objective or purpose to accomplish the worker's injury, using some means appropriate to that end.

Substitute Bill Compared to Original Bill: The substitute bill deletes the definition of "deliberate intention" under which an employer would be found liable for a worker's injury if the specific purpose of the employer's conduct was to bring about the worker's injury and adds the definition that requires a finding of specific intent.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: When the industrial insurance system was established in 1911, it was intended to compensate employees for workplace injuries regardless of fault and to provide employers broad immunity from suit for these injuries. That immunity has been very narrowly construed by the courts until the latest Supreme Court decision. The bill is intended to return to the narrow construction and restore the balance intended since 1911. The new reading by the court would permit law suits against employers even if there was no intent by the employer to injure employees. This means that injured workers will have two tracks to gain compensation for workplace injuries. It will be very difficult for employers in the modern workplace to know the extent of their liability, given the problems with sick building syndrome and other issues related to chemicals, even if they have met every required safety standard. Only a bright line test will protect small employers against expensive litigation.

Testimony Against: The issue in this bill is basic fairness - the question is whether employers should be protected from suits for workplace injuries if the employer has actual knowledge that workers are being injured in the workplace and does nothing about it. The court decision requires "certain knowledge" before employers would be liable, which would not be met if science showed only a risk of injury. The "certain knowledge" standard gives a clear line for employers to meet. If employers cannot be sued under this standard, the cost of illnesses suffered by employees in their workplaces will be spread across the system to all other employers.

Testified: (In support) V. Woolston, Boeing Company; Clif Finch, Association of Washington Business; Chris Cheney, Washington Growers League. (Opposed) Randolph Gordon; Bob Dilger, Washington State Building and Construction Trades Council; Allan Darr, International Union of Operating Engineers; Robby Stern, Washington State Labor Council; and Pat McElligott, Washington State Council of Fire Fighters.