

SENATE BILL REPORT

ESB 6317

As Passed Senate, February 17, 2004

Title: An act relating to authorizing self-insurers to make claim decisions and actively participate in workers' compensation claims.

Brief Description: Expanding the role of self-insurers in the workers' compensation system.

Sponsors: Senators Honeyford, T. Sheldon, Hewitt, Mulliken and Rasmussen.

Brief History:

Committee Activity: Commerce & Trade: 1/22/04, 2/6/04 [DPS-WM, DNP].

Ways & Means: 2/9/04 [DPS (CT), DNP].

Passed Senate: 2/17/04, 29-20.

SENATE COMMITTEE ON COMMERCE & TRADE

Majority Report: That Substitute Senate Bill No. 6317 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Honeyford, Chair; Hewitt, Vice Chair; and Mulliken.

Minority Report: Do not pass.

Signed by Senators Franklin and Keiser.

Staff: Jennifer Strus (786-7316)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6317 as recommended by Committee on Commerce & Trade be substituted therefor, and the substitute bill do pass.

Signed by Senators Zarelli, Chair; Hewitt, Vice Chair; Parlette, Vice Chair; Carlson, Hale, Honeyford, Johnson, Pflug, Rasmussen, Roach and Sheahan.

Minority Report: Do not pass.

Signed by Senators Fairley, Fraser, Prentice, Regala and B. Sheldon.

Staff: Carole Holland (786-7441)

Background: Washington State requires most employers to provide workers' compensation coverage for their employees either through participation in the state fund or by being self-insured under RCW 51.14. An employer may be a self-insurer if it establishes to the director of the Department of Labor and Industries (L&I) that it has sufficient financial ability to make its workers' compensation payments.

Self-insurers are closely monitored by L&I and, with some exceptions, do not have the ability to administer workers' compensation claims made by its workers.

Summary of Bill: The general rule that self-insured employers are vested with the powers and duties necessary to process many aspects of workers' compensation claims of their injured workers without prior approval or consent of L&I is established. The ability of injured workers, who receive workers' compensation benefits through a self-insurer, to protest and appeal their rights to L&I is maintained.

L&I has the authority to issue subpoenas for the self-insurers, upon request. Self-insurers have an obligation to report a summary of claims information to L&I every month to enable L&I to fulfill its audit responsibilities.

If the self-insurer does not act on a request to initiate a new claim within a specified period of time, the claim is automatically allowed. The self-insurer makes the decision about whether a pension should be granted to an injured worker, but all other aspects of managing a pension remain with L&I.

Self-insurers make the initial decision on whether or not vocational rehabilitation should be provided, but the L&I director retains sole discretion to make final vocational rehabilitation decisions.

An injured worker may request that L&I intervene with a self-insurer when the worker believes the self-insurer is not acting on a claim request. L&I can compel the self-insurer to issue an order on the worker's request.

L&I has the right to require a self-insurer to correct an error in a closed claim when an error is discovered in an audit up to two years after the claim is closed.

New penalties are created in addition to those currently in statute: a penalty up to \$2,500 for some violations, and for intentional and repeated violations, the penalty can be up to \$25,000.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on January 1, 2006.

Testimony For: The current problem in the workers' compensation system with self-insurers is that L&I duplicates the work done by the self-insurer. The backlog of self-insurer cases awaiting approval by L&I is growing. Other states do not have the level of oversight of self-insurers that Washington does. The 1998 JLARC study recommended an ombudsman rather than the paternalistic oversight currently used by L&I.

Testimony Against: Agree that reform regarding self-insurers is needed but in this bill there is a bad balance between the state, the employer and the employee. This bill is essentially harmful to workers. Without L&I overseeing the self-insurers, there is no guarantee the self-insurers are providing the appropriate workers' compensation benefits.

Testified: PRO: Linda Maw, WSIA; Tina Coakley, The Boeing Co.; Donna Egeland, Alaska Airlines; Kathleen Collins, WSIA. CON: Paul Trause, Department of Labor & Industries; Wayne Lieb, WSTLA; Robby Stern, WSLC; David Johnson WSBCTC.