

# HOUSE BILL REPORT

## SHB 1244

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### As Passed Legislature

**Title:** An act relating to industrial insurance, but only with respect to defining wages to include the cost of health insurance.

**Brief Description:** Defining wages for industrial insurance purposes.

**Sponsors:** By House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Hankins, Clibborn, Wood, Hunt, Haler, Morrell, Kirby, Hasegawa, Moeller, Sells, Strow, McCoy, O'Brien, Ericks, Simpson, Green, Campbell, Williams, Kenney and Ormsby).

#### **Brief History:**

##### **Committee Activity:**

Commerce & Labor: 1/30/07, 2/16/07 [DPS].

##### **Floor Activity:**

Passed House: 3/6/07, 64-32.

Senate Amended.

Passed Senate: 4/4/07, 47-0.

House Concurred.

Passed House: 4/14/07, 63-31.

Passed Legislature.

#### **Brief Summary of Substitute Bill**

- Modifies the statutory definition of wages used to calculate workers' compensation benefits to include an employer's payment or contributions, or appropriate portions thereof, for health care benefits unless the employer continues ongoing and current payment or contributions for these benefits at the same level as provided at the time of injury.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** Do not pass. Signed by 2 members: Representatives Condotta, Ranking Minority Member and Chandler, Assistant Ranking Minority Member.

**Staff:** Sarah Beznoska (786-7109).

**Background:**

Workers injured in the course of employment may receive various benefits under the Industrial Insurance Act. Compensatory benefits (time-loss, pension, and survivor benefits) for injured workers or their surviving beneficiaries are based on the monthly wages that the worker was receiving from all employment at the time of injury. For most purposes, wages include:

- the reasonable value of board, housing, fuel, or other consideration of like nature received from the employer;
- health care benefits (except during the periods the employer continues to provide it), valued at the employer's cost, under a decision by the Washington Supreme Court in *Cockle v. Department of Labor and Industries*;
- tips reported for federal income tax purposes; and
- the average monthly value of bonuses received from the employer in the preceding 12 months.

Rules adopted by the Department of Labor and Industries (Department) on "consideration of like nature" (including health care benefits) specify that the value of such consideration is only included in wages if:

- the employer provided the benefit to the worker at the time of injury;
- the worker received the benefit at the time of injury; and
- the worker or beneficiary no longer receives the benefit and the Department or self-insurer has knowledge of this change.

With respect to the requirement that the worker no longer receive the benefit, the rules further specify that, if the worker continued to receive the benefit from a union trust fund or other entity for which the employer made a financial contribution at the time of injury, the employer's monthly payment for the benefit is not included in wages.

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**Summary of Substitute Bill:**

As consideration of like nature to board, housing, and fuel, wages also include an employer's payment or contributions, or appropriate portions thereof, for health care benefits unless the employer continues ongoing and current payment or contributions for these benefits at the same level as provided at the time of injury.

This change applies to all wage determinations issued on or after the effective date.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:**

(In support) When negotiating compensation packages in the construction industry, some wages go into health and welfare programs, some into vacation banks, and some to other programs, as determined by the negotiating parties. It is not logical to require an employee to use health insurance from an hour bank or union trust fund before having amounts count towards workers' compensation wages. It is similar to requiring an employee to use vacation pay before being entitled to time-loss under the workers' compensation system.

In *Cockle v. Department of Labor and Industries*, the Washington Supreme Court decided that the wages used to calculate time-loss should include the value of employer-provided health care. The court held that, to the extent the employer continues to provide the benefits during the period of the worker's disability, the value of the benefit should not be included in the worker's monthly wage for the purposes of workers' compensation. The Department of Labor and Industries (Department) has determined that, in the case of hour banks, the hour bank is considered continued employer-provided coverage and the amount contributed to the hour bank is not considered part of workers' compensation wages until benefits from the hour bank are depleted.

Hour banks are a benefit that a building trades worker purchases with wages through a Taft-Hartley Trust Fund. The worker negotiates the health care plan and what coverage is included out of wages. When the contribution stops, the worker should be entitled to the value of the benefit being included in the time-loss calculation. Hour banks are intended to cover a worker through periods of unemployment. The term hour bank comes from the fact that, in the building trades, after a certain number of hours worked, the worker becomes eligible for health care benefits from the trust.

The Department made the wrong decisions after *Cockle* and that has complicated the fix that is needed. If the payment of a premium into a trust fund stops, that should trigger the worker's health and welfare benefits being calculated into the worker's time loss payments. Once a worker is off the job and no work hours are turned into the bank, then the Department should begin counting that contribution into the workers' compensation benefit.

Health care coverage is a top priority and the Department's interpretation of *Cockle* has created more uninsured workers. These are workers who have been responsible and taken part of their wages and put them into an hour bank. The Department's interpretation assures that the worker and his or her family will become uninsured.

(Information) Currently, if a worker has health coverage available from a Taft-Hartley Trust Fund, the Department does not re-calculate workers' compensation benefits to include the value of that health coverage until the health coverage ends. The bill would say that, at the

time the employer stops paying, that's when the value of the health coverage would be included in the workers' compensation benefit.

(Opposed) The purpose of these trusts is to help provide benefits for workers that float between employers. In the case of construction, a worker might work for multiple employers and the trust provides continuity of benefits. Employers pay for these benefits as part of a collective bargaining agreement. Part of this discussion involves whether or not an employer is contributing toward the benefit. The other piece is whether or not the injured worker is, in fact, without a benefit already pre-paid. In the case of a new worker, the employer begins paying from the first hour worked even though the worker might not become eligible until the 90th hour worked. The employer is pre-paying benefits that the worker will become eligible for in the future. Trusts establish thresholds -- if a worker works a certain number of hours, that worker becomes eligible for the benefit. The employer perspective is that the employer has pre-paid the worker for benefits.

The decision in *Gallo v. Department of Labor and Industries* reiterated that the worker must be receiving the benefit at the time of injury for it to be considered as a part of workers' compensation wages. If the worker uses up the banked hours, the employer includes the amount in time-loss payments. A worker must use up the pre-paid benefit before the amount is included in time-loss.

This affects more than just the construction industry. Grocers and other industries also use the banked hours system and are covered under this bill. For example, some grocers pay into a trust and workers do not become eligible for benefits from the trust until the fourth month. At that point, the worker can choose to take the benefit or not, but even if the worker chooses not to take the benefit, the employer keeps paying into the fund. Under this bill, even if the worker chooses not to take health benefits once eligible, if the worker becomes injured, the employer would have to continue making payment into the trust fund even though the worker is not actually eligible for the benefit.

The fiscal note does not reflect self-insured employers.

The third case in this line is *Granger v. Department of Labor and Industries* and the decision is pending.

There are concerns about how the title and text of the proposed substitute match up.

**Persons Testifying:** (In support) David Lauman, Washington Trial Lawyers' Association; Owen Linch, Joint Council of Teamsters; Robby Stern, Washington State Labor Council; and David Johnson, Washington State Building and Construction Trades Council.

(Information) Robert Malooly and Vickie Kennedy, Department of Labor and Industries.

(Opposed) Dave Kaplan, Washington Self-Insurers Association; Kris Tefft, Association of Washington Business; and Holly Chisa, Northwest Grocery Association.

**Persons Signed In To Testify But Not Testifying:** None.