

SENATE BILL REPORT

SHB 1244

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, March 29, 2007

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: 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: Passed House: 3/06/07, 64-32.

Committee Activity: Labor, Commerce, Research & Development: 3/26/07, 3/29/07 [DPA].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: Do pass as amended.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Clements, Ranking Minority Member; Franklin, Hewitt, Holmquist, Murray and Prentice.

Staff: Jennifer Strus (786-7316)

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 (L&I) on "consideration of like nature" (including health care benefits) specify that the value of such consideration is only included in wages if:

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.

- 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 L&I or the 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.

Summary of Substitute Bill: The statutory definition of wages is modified to include the reasonable value of health care. The statutory definition of wages is further modified to include the reasonable value of board, fuel, housing, health care, and other consideration of like nature, unless the employer continues ongoing and current payment or contributions for such benefit at the same level as provided at the time of injury.

The changes apply to all wage determinations issued on or after the effective date.

EFFECT OF CHANGES MADE BY RECOMMENDED AMENDMENT(S) AS PASSED COMMITTEE (Labor, Commerce, Research & Development): Clarifies that for purposes of calculating time loss payments, wages include the employer's payment or contributions 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 the worker was hurt.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill has to do with fairness. The recent Supreme Court case, *Granger*, does not address the problem that this bill addresses. This bill applies only to a worker who was injured on the job and whose wages were applied towards their banked hours of personal health care coverage. The bill addresses injured workers in the construction and grocery industries who have bought health care ahead of time for themselves and their families for personal coverage off the job and during lay-off. Without this bill, these workers are penalized for caring for their family's health by having their banked health care hours removed from consideration by L&I in the calculation of their time loss benefit.

CON: There is real concern about the language used in the substitute because it seems to broaden the existing exception, that makes it easier to argue that any fringe benefit is of "like nature." This language will just lead to increased litigation. This bill is about risk and exposure to litigation. The parties can work on the underlying policy of the bill. The language was clearer in the original bill draft than in the substitute. The bill is not needed because the *Granger* decision took care of the issue. What the Building Trades are trying to do with banked hours is not opposed, but there is objection to the language that is being used to accomplish this because it's too broad.

OTHER: The attorneys advising L&I do not believe the bill expands the *Granger* decision.

Persons Testifying: PRO: Dave Johnson, Building Trades; David Lauman, Washington State Trial Lawyers Association; Owen Linch, Joint Council of Teamsters #28.

CON: Kris Tefft, Association of Washington Business; Tammie Hetrick, Washington Retail Association; Vaughn Mowrey, Safeway Stores; Kathleen Collins, Washington Self-Insurers' Association; Rick Slunaker, Association General Contractors of Washington.

OTHER: Vickie Kennedy, L&I.