

SENATE BILL REPORT

SB 5443

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, February 26, 2007

Title: An act relating to the suppression of workers' compensation claims.

Brief Description: Suppressing workers' compensation claims.

Sponsors: Senators Kohl-Welles and Keiser; by request of Department of Labor & Industries.

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 1/22/07, 2/26/07 [DPS, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5443 be substituted therefor, and the substitute bill do pass.

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

Minority Report: Do not pass.

Signed by Senator Holmquist.

Staff: Kathleen Buchli (786-7488)

Background: Under the workers' compensation system, when a worker is injured, the worker, or someone on his or her behalf, must report the accident and any ensuing injury, to his or her employer. If the worker is entitled to receive workers' compensation benefits, the worker must file a claim with the Department of Labor & Industries (L&I) within one year of the date of injury.

When an employer has notice or knowledge of an injury or occupational disease sustained by a worker during the course of employment, the employer must report the injury or occupational disease to L&I. An employer who fails or refuses to file a report is subject to a penalty of up to \$250 for each offense.

Summary of Bill: Employers are prohibited from engaging in claim suppression. "Claim suppression" is defined as expressly or repeatedly inducing employees to fail to report injuries, inducing employees to treat injuries in the course of employment as off-the-job injuries, or otherwise acting to suppress legitimate workers' compensation insurance claims.

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.

Employers who engage in claim suppression are subject to a penalty of at least \$250, but no more than \$2,500, for each offense. These employers are also prohibited from engaging in the retrospective rating program or if self-insured, will have their self-insurance certification withdrawn.

L&I is given subpoena authority that is limited solely to investigations of allegations of claim suppression. The time limit for filing a claim for workers' compensation benefits is waived if the Director of L&I determines that claim suppression has occurred.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Labor, Commerce, Research & Development): The definition of claim suppression is changed from expressly or repeatedly inducing employees to fail to report injuries to intentionally inducing employees to fail to report injuries. Claim suppression does not include bona fide workplace safety and accident prevention programs, and L&I is given authority to adopt rules defining a bona fide workplace safety and accident program and first aid. A determination of claim suppression may be protested to L&I or the Board of Industrial Insurance Appeals. The Director of L&I may subpoena records from an employer upon showing probable cause that claim suppression may have occurred. The statute of limitations on filing a workers' compensation claim may be waived from one year to two years at the Director's discretion if there has been a finding of claim suppression. The claim must be filed with the Department of Labor and Industries within 90 days of the date the determination of claim suppression is issued.

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: Some employers engage in practices that are designed to covertly discourage the filing of claims. There are no provisions in law that apply to state fund employers who discourage the reporting of injuries or the filing of claims. Having the language in the bill in statute would be an effective deterrent. Some employers have encouraged their employees to categorize their injuries as off the job injuries, require employees to sign forms or time cards that state they must report their injuries the day or the week that they are injured, or gave their employees first aid on the job and told them they may not leave the premises to get medical attention. These are some of the reasons this bill is needed.

CON: There is no data available that supports that there is a problem of claim suppression. Claim suppression is already prohibited for self-insurers. The bill is not narrowly tailored and could include accidents or non-willful acts. This could endanger workplace safety and incentives programs. Forms or time cards that require an employee to report injuries by the end of the work day or work week are for the safety of the employee. The forms or time cards cannot stop an employee from making a claim because claims are initiated when the physician fills out the report and are used by the employer to know what is happening with their employees. It is unclear as to what point giving first aid to an employee becomes claim suppression.

Persons Testifying: PRO: Judy Schurke, Department of Labor and Industries; Vicki Kennedy, Department of Labor and Industries; Robby Stern, Washington State Labor Council; Karen Gude, United Food and Commercial Workers; Jerri Wood, WSARA; Michael Settles, Carpenters Union; and Owen Linch, Teamsters.

CON: Kris Tefft, Association of Washington Business; Dave Kaplan, Washington Self-Insurers Association; Dan Fazio, Farm Bureau; and Gary Smith, Independent Business Association.