

SENATE BILL REPORT

SB 5507

As Reported by Senate Committee On:
Commerce & Labor, February 18, 2015

Title: An act relating to appeals by employers of department of labor and industries' fines or civil penalties.

Brief Description: Addressing appeals by employers of department of labor and industries' fines or civil penalties.

Sponsors: Senators Braun, Rivers, Sheldon, Angel and Schoesler.

Brief History:

Committee Activity: Commerce & Labor: 2/11/15, 2/18/15 [DPS, DNP, w/oRec].

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: That Substitute Senate Bill No. 5507 be substituted therefor, and the substitute bill do pass.

Signed by Senators Baumgartner, Chair; Braun, Vice Chair; King and Warnick.

Minority Report: Do not pass.

Signed by Senators Hasegawa, Ranking Minority Member; Conway.

Minority Report: That it be referred without recommendation.

Signed by Senator Keiser.

Staff: Mac Nicholson (786-7445)

Background: Under the state industrial insurance laws, employers are required to purchase industrial insurance, or if qualified, the employer can self-insure. The basic calculation for industrial insurance premiums is the hourly rate as calculated by the Department of Labor and Industries (L&I) multiplied by the hours worked by the employee. The hourly rate varies based on the risk classification or classifications assigned to the employer's business. Employers must keep accurate timesheets and payroll records, and to file quarterly reports with L&I that include the actual number of hours worked by employees.

Penalties may be assessed against an employer that fails to file a quarterly report, fails to pay premiums, fails to keep adequate timesheets and payroll records, misrepresents the amount of payroll or employee hours, and for other violations. Employers who disagree with an L&I

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decision can protest or request reconsideration of the ruling with L&I, which will result in L&I either changing or reaffirming the earlier decision. An employer may also appeal an L&I decision to the Board of Industrial Insurance Appeals (BIIA), which is a separate state agency that conducts hearings when workers' compensation issues cannot be resolved at L&I. An employer may appeal a final decision of the BIIA to superior court.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Substitute): If an employer appeals an L&I order or decision imposing a fine or civil penalty for certain actions, and the employer prevails before the BIIA or in a court action, L&I must pay a penalty to the employer in an amount equal to the amount of any fine and penalty determined to not be due by the court or BIIA order, along with reasonable attorneys' fees and costs.

Any amount owed to a state-fund employer is paid half out of the medical aid fund and half out of the accident fund. Amounts owed to self-insured employers are paid out of the supplemental pension fund.

Fines or penalties issued for the following actions may result in an award to the employer:

- failing to secure payment of compensation;
- failing to report the payroll or employee hours related to employment;
- failing to keep and preserve required records; and
- misrepresenting the amount of payroll or employee hours upon which a premium is based.

EFFECT OF CHANGES MADE BY COMMERCE & LABOR COMMITTEE (Recommended Substitute): The substitute allows employers to receive reasonable attorneys' fees and costs, and directs that amounts owed to self-insured employers be paid out of the supplemental pension fund.

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 on Proposed Substitute as Heard in Committee:
PRO: The playing field between L&I and businesses needs to be leveled, and this bill does that. L&I audits employers without any facts to support their conclusions, and to even fight the findings would cost a lot in attorneys fees. Even if business owners win, L&I doesn't have to pay attorney fees and costs. Penalties that L&I assesses tend to be shoot first, ask questions later, and aren't necessarily based on established facts or a thorough investigation. This bill is an opportunity to be fair and equitable, and for the employer to become financially whole.

CON: It's not clear which penalties the bill applies to. The bill would pay the employer who

prevails an amount that would come out of the funds that are collected from workers and employers. There should be no incentive in the bill to skip any steps, including reconsideration or mediation, and go directly to the BIIA.

Persons Testifying: PRO: Bob Battles, Assn. of WA Business; Christine Brewer, WA Self Insurers Assn.; Kerry Cox, ITC Systems; Victor Proulx, ARA of WA; Patrick Connor, National Federation of Independent Business WA; Jessica Dana, Troy Dana, Jessica Dana Racing; Pat Tarzwell, citizen.

CON: Tammy Fellin, L&I.