
**Labor & Workplace Standards
Committee**

HB 2697

Brief Description: Limiting industrial insurance benefits for injuries or diseases caused by use of intoxicating liquor or drugs.

Sponsors: Representatives Pike, Manweller, Eslick and Condotta.

Brief Summary of Bill

- Provides that an injured worker's industrial insurance benefits, other than medical, are reduced if the worker's being intoxicated was a proximate cause of the worker's injury or death.

Hearing Date: 1/23/18

Staff: Joan Elgee (786-7106).

Background:

Workers who are injured in the course of employment or disabled from an occupational disease are entitled to industrial insurance benefits. Workers are eligible for medical, temporary time loss, and vocational rehabilitation benefits, as well as benefits for permanent disabilities. A worker's survivors are also entitled to certain benefits. Washington's industrial insurance laws do not address alcohol or drug use as a cause of workplace injury or disease. A 1982 Washington Court of Appeals case, *Flavorland v. Schumacker*, examined the issue of whether an intoxicated worker was in the course of employment and held that intoxication is a defense only when the worker was so intoxicated that the worker abandoned the employment.

A number of states make use of drugs or alcohol a defense or grounds for a reduction in benefits.

Summary of Bill:

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.

Industrial insurance benefits, other than medical, are reduced if the worker's being under the influence of or affected by intoxicating liquor or any drug was the proximate cause of the worker's injury or death. Each payment is reduced proportionately by the percentage of the cause of injury or death attributable to the intoxication. However, the worker must receive at least 10 percent and may receive no more than 90 percent of benefits. This limit on benefit eligibility does not apply if the employer permitted or had knowledge of the worker's use of liquor or drugs, or the drug was prescribed by a health care practitioner and the worker used the drug in accordance with the directions.

A qualifying chemical test is required to determine whether the worker was under the influence of liquor or a drug. A rebuttable presumption that the worker was under the influence and that the intoxication was the primary cause of the injury or death is established if the worker refuses the qualifying chemical test, or had an alcohol concentration of 0.08 or higher or a THC concentration of 5.00 or higher, the standards for driving under the influence.

A "qualifying chemical test" is a test performed by methods approved by the State Toxicologist or by a State Toxicologist permit holder, or which is performed under standards established by a nationally recognized organization.

The provisions do not affect the rights of an employer to prohibit the use of liquor or drugs or to test workers for liquor or drugs.

The provisions apply to dates of injury or disease manifestation after the effective date of the act.

Appropriation: None.

Fiscal Note: Available.

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