

HOUSE BILL REPORT

HB 1909

As Reported by House Committee On: Labor & Workplace Standards

Title: An act relating to protecting the confidentiality of industrial insurance claim records.

Brief Description: Concerning the confidentiality of industrial insurance claim records.

Sponsors: Representatives Graham, Lovick, Griffey, Davis, MacEwen and Corry.

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/12/19, 2/18/19 [DPS].

Brief Summary of Substitute Bill

- Provides that if an employer or employer's authorized representative reveals information in an injured worker's claim file regarding a mental health condition or treatment to any person other than an authorized representative, the employer is subject to a civil penalty of \$1,000 for each occurrence.
- Requires the Department of Labor and Industries to ensure that employers and workers are notified of their rights and responsibilities regarding claim files.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Sells, Chair; Chapman, Vice Chair; Mosbrucker, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Gregerson, Hoff and Ormsby.

Staff: Joan Elgee (786-7106).

Background:

Workers injured in the course of employment are entitled to medical care under the industrial insurance program administered by the Department of Labor and Industries (Department). All medical information relevant to the particular injury in the opinion of the Department must be made available to the employer, as well as the workers' representative and the

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Department upon request. Workers sign a release authorizing the Department to receive information from the claimant's health care providers regarding the claimant's condition.

Information in claim files and records of injured workers is generally confidential. Employers, or their duly authorized representatives, may review files of their own injured workers in connection with any pending claims.

All workers and employers contribute to the Supplemental Pension Fund, which pays for cost-of-living adjustments for injured workers.

Summary of Substitute Bill:

If the employer or the duly authorized representative reveals information in a claim file regarding a mental health condition or treatment to any person other than an authorized representative, the employer is subject to a civil penalty of \$1,000 for each occurrence. The Department must investigate a complaint and issue a notice of assessment if it determines that the employer violated the prohibition. The determination may be appealed. Once the order is final, the penalty amount is collected and deposited into the Supplemental Pension Fund.

The Department must ensure that employers and workers are notified of their rights and responsibilities regarding claim files.

Substitute Bill Compared to Original Bill:

The substitute bill:

- limits the revealed information subject to penalty to mental health condition or treatment information rather than all information;
- removes the requirement for employers to have a written policy regarding file storage;
- adds the requirement that the Department ensure workers and employers are notified of their rights and responsibilities; and
- deletes references to employer agents with a need to know.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Sensitive information needs to be protected and shared only on a need to know basis. Currently, there is no differentiation between mental and physical injuries for purposes of the records. An unintended consequence of last year's posttraumatic stress disorder bill is that very personal information is part of the file. A firefighter sought counseling and someone in the office saw the records and shared it everywhere. Another person committed suicide. The lack of privacy is a barrier to getting care. The files are not covered by the Health Insurance Portability and Accountability Act. The Department will still be able to get the information they need.

(Opposed) Confidentiality is important. But current law already addresses disclosure and provides a penalty.

(Other) People should be able to get help. The wording, such as "agent" and "need to know," is vague. The bill does not address union representatives sharing information they should not.

Persons Testifying: (In support) Representative Graham, prime sponsor; A.J. Johnson, Washington State Council of Fire Fighters; and Jeff DeVere, Washington Council of Police and Sheriffs.

(Opposed) Tom Kwieciak, Building Industry Association of Washington.

(Other) James McMahan, Washington Association of Sheriffs and Police Chiefs; and Christine Brewer, Washington Self-Insurers Association.

Persons Signed In To Testify But Not Testifying: None.