

HOUSE BILL REPORT

HB 1257

As Reported by House Committee On:
Labor & Workplace Standards

Title: An act relating to prohibiting unjustified employer searches of employee personal vehicles.

Brief Description: Prohibiting unjustified employer searches of employee personal vehicles.

Sponsors: Representatives Orcutt, Lovick and Walsh.

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/2/21, 2/15/21 [DP].

Brief Summary of Bill

- Prohibits certain searches of employee vehicles in employer parking areas.
- Provides for employee possession of their personal property in their vehicles, unless prohibited by law.
- Provides for investigations and potential civil penalties by the Department of Labor and Industries.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 7 members: Representatives Sells, Chair; Berry, Vice Chair; Hoff, Ranking Minority Member; Mosbrucker, Assistant Ranking Minority Member; Bronoske, Harris and Ortiz-Self.

Staff: Trudes Tango (786-7384).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

The Department of Labor and Industries (Department) has general investigative and enforcement authority over conditions of labor, which are unlawful when detrimental to employee health. Conditions of labor include personal privacy. There are no specific statutes regarding workplace searches.

Government employers are subject to federal and state constitutional privacy restrictions. Generally, a government actor needs a warrant supported by probable cause to conduct a search of private property, unless an exception applies. In the employment setting, an exception may apply when the employer has a compelling interest and narrowly tailors the search to achieve that interest.

Under common law, courts generally look to the circumstances, context, and nature of a search to determine whether an invasion of privacy has occurred. In the workplace, these factors may include the business reasons for the search, the intrusiveness of the search, and the degree of privacy of the object searched.

Summary of Bill:

An employer or an employer's agent may not search employees' privately owned vehicles in the employer's parking lots, garages, or access road to the employer's lots or garages. An employee may possess any of their property within their vehicle, unless possession is prohibited by law. An employer may not require, as a condition of employment, that an employee waive these protections.

The prohibition against employer searches does not apply to:

- vehicles owned or leased by the employer;
- lawful searches by law enforcement;
- security inspections of vehicles on state and federal military installations and facilities;
- vehicles located on the premises of a state correctional institution;
- specific employer areas subject to searches under state or federal law;
- when, based on a reasonable person standard, accessing an employee's vehicle is necessary to prevent immediate threat to human health, life or safety; or
- when an employee consents to a search by the business owner, owner's agent, or a licensed private security guard, based on probable cause that the employee unlawfully possesses: (i) employer property; or (ii) controlled substances in violation of federal law and the employer's written policy prohibits drug use. The employer's policy must contain a notice to employees that personal vehicles may be subject to search based on probable cause. The employee may select a witness to be present for the search.

The Department must investigate employee complaints and may impose a civil penalty of not more than \$1,000 for a first violation and not more than \$5,000 for any subsequent violation, plus costs of investigation and enforcement. Civil penalties must be deposited in

the Supplemental Pension Fund.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on January 1, 2022.

Staff Summary of Public Testimony:

(In support) This version of the bill has been agreed to by all the stakeholders. Property that is legal to possess becomes illegal if it is against the employer's policy. Workers should not have to worry about that or be afraid of getting terminated for possessing legal property.

(Opposed) None.

Persons Testifying: Sean O' Sullivan and Bill Sauters, Association of Western Pulp and Paper Workers.

Persons Signed In To Testify But Not Testifying: None.