

# SENATE BILL REPORT

## SB 5254

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As Reported by Senate Committee On:  
Labor, Commerce & Tribal Affairs, February 10, 2021

**Title:** An act relating to the use of protective devices and equipment during a public health emergency.

**Brief Description:** Concerning the use of protective devices and equipment during a public health emergency.

**Sponsors:** Senators Salomon, Darneille, Frockt, Hasegawa, Keiser, Saldaña, Stanford and Wilson, C..

**Brief History:**

**Committee Activity:** Labor, Commerce & Tribal Affairs: 1/25/21, 2/10/21 [DPS, DNP, w/oRec].

**Brief Summary of First Substitute Bill**

- Requires an employer that does not require a specific type of personal protective equipment (PPE) to accommodate an employee's or contractor's voluntary use of that PPE during a public health emergency, subject to certain conditions.

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### SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

**Majority Report:** That Substitute Senate Bill No. 5254 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair, Labor; Stanford, Vice Chair, Commerce & Tribal Affairs; King, Ranking Member; Robinson and Saldaña.

**Minority Report:** Do not pass.

Signed by Senator Schoesler.

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*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.*

**Minority Report:** That it be referred without recommendation.

Signed by Senators Braun and Honeyford.

**Staff:** Jarrett Sacks (786-7448)

**Background:** Under the Washington Industrial Safety and Health Act (WISHA), an employer must provide a workplace free from recognized hazards. The Department of Labor and Industries (L&I) administers WISHA. L&I has adopted general safety standards that apply to most industries, and has safety standards that apply only to specific industries.

Employers must develop a formal accident prevention program tailored to the particular workplace and hazards involved and must provide their employees with appropriate protective measures for each hazard involved. For certain hazards, personal protective equipment (PPE) must be provided. By L&I rule, PPE must be provided at no cost to the employee if:

- the type of PPE would not reasonably or normally be worn away from the workplace, such as single use or disposable PPE; and
- it is required to comply with safety and health standards to protect employees wherever hazards exist from processes; environmental hazards; physical, chemical, or radiological hazards; or mechanical irritants that could cause injury to the function of any body part through absorption, inhalation, or physical contact.

**Summary of Bill (First Substitute):** During a public health emergency, every employer who does not require employees or contractors to wear a specific type of PPE must accommodate an employee's or contractor's voluntary use of that specific type of PPE, if:

- the voluntary use of these protective devices and equipment does not introduce hazards to the work environment and is consistent with the WISHA and L&I rules;
- the use of facial coverings does not interfere with an employer's security requirements; and
- the voluntary use of these protective devices and equipment does not conflict with standards for that specific type of equipment established by the Department of Health or L&I.

An employer may verify that the voluntary use of PPE meets all regulatory requirements for workplace health and safety.

An employer may not apply to L&I for a temporary order granting a variance from the requirements under the bill.

A public health emergency is a declaration or order relating to controlling and preventing the spread of any infectious or contagious disease that covers the jurisdiction where the individual or business performs work, and is issued as follows:

- the President of the United States has declared a national or regional emergency;
- the Governor has declared a state of emergency; or

- an order has been issued by a local health officers.

**EFFECT OF CHANGES MADE BY LABOR, COMMERCE & TRIBAL AFFAIRS COMMITTEE (First Substitute):**

The requirement that an employer that requires PPE must provide the required equipment at no cost to the employee is removed. A requirement that the voluntary use of the PPE not conflict with standards for the specific type of equipment established by the Department of Health or L&I is added. A provision authorizing employers to verify that the voluntary use of the PPE meets all regulatory requirements for workplace safety and health is added.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: At the start of the pandemic, workers were afraid of getting sick but were told by employers to not wear masks because it would scare customers. Many times, employer-supplied PPE was unavailable, but they would still be prohibited from bringing their own from home. Some workers were sent home for insisting on wearing a mask to work. These types of employer policies harm employees that are already the most vulnerable.

OTHER: The bill needs an amendment that specifies that, if an employer provides PPE, they do not have to accommodate an employee's voluntary use that differs from the employer-provided PPE.

**Persons Testifying:** PRO: Senator Jesse Salomon, Prime Sponsor; Erin Haick, SEIU 925.

OTHER: Alicia Eyler, Washington State Hospital Association.

**Persons Signed In To Testify But Not Testifying:** No one.