

FINAL BILL REPORT

2SHB 1491

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Synopsis as Enacted

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

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Orcutt, Chapman, Berry, Bronoske, Tharinger and Pollet).

House Committee on Labor & Workplace Standards

House Committee on Appropriations

Senate Committee on Labor & Commerce

Senate Committee on Ways & Means

Background:

The Department of Labor and Industries (Department) has general investigative and enforcement authority over "conditions of labor" that are unlawful when detrimental to employee health. Conditions of labor include personal privacy. There are no specific statutes or Department rules 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:

Employers or their agents may not search an employee's privately owned vehicle located on

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the employer's parking lots, garages, or access roads to the employer's parking lots or garages. An employee may possess any legally possessed private property in the employee's vehicle. An employer must not require, as a condition of employment, that an employee or prospective employee waive those protections.

The prohibition against searches does not apply to:

- vehicles owned or leased by an employer;
- lawful searches by law enforcement officers;
- when a reasonable person would believe that accessing an employee's vehicle is necessary to prevent an immediate threat to human health, life, or safety;
- when the employer requires or authorizes the employee to use the employee's vehicle for work-related activities and the employer needs to inspect the vehicle to ensure it is suited to conduct the work-related activities;
- security inspections on state and federal military installations and facilities;
- vehicles located on state correctional institution premises;
- specific employer areas subject to searches under state or federal law; or
- when an employee consents to a search based on probable cause that the employee unlawfully possesses: employer property; or controlled substances in violation of both federal law and the employer's written policy prohibiting drug use.

The employee's consent must be given immediately prior to the search and the employer may not require that the employee waive consent as a condition of employment. Upon consent, the employee may select a witness to be present during the search.

An employer may not take any adverse action against an employee for exercising any rights established under these provisions. Adverse action means any action taken or threatened by an employer against an employee for exercising the employee's rights, and may include: (1) denying or delaying wages owed; (2) terminating, suspending, demoting, or denying a promotion; (3) reducing an employee's work hours or altering a preexisting schedule; (4) reducing pay; and (5) taking action or threatening to take action based on the employee's or family member's immigration status.

Votes on Final Passage:

House	87	10	
Senate	45	4	(Senate amended)
House	95	1	(House concurred)

Effective: July 23, 2023