

SENATE BILL REPORT

2SHB 1491

As Passed Senate - Amended, April 11, 2023

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

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).

Brief History: Passed House: 3/2/23, 87-10.

Committee Activity: Labor & Commerce: 3/16/23, 3/23/23 [DP-WM].

Ways & Means: 3/31/23, 4/03/23 [DPA, w/oRec].

Floor Activity: Passed Senate - Amended: 4/11/23, 45-4.

Brief Summary of Bill (As Amended by Senate)

- Prohibits an employer from searching an employee's vehicle in the employer's parking areas, subject to certain exceptions, and from retaliating against an employee for exercising any right under the legislation.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; King, Ranking Member; Braun, MacEwen, Robinson, Schoesler and Stanford.

Staff: Matt Shepard-Koningsor (786-7627)

SENATE COMMITTEE ON WAYS & MEANS

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.

Majority Report: Do pass as amended.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Boehnke, Braun, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Nguyen, Pedersen, Saldaña, Torres, Van De Wege and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senator Wagoner.

Staff: Tianyi Lan (786-7432)

Background: Constitutional Privacy Restrictions. Government employers are subject to federal and state constitutional privacy restrictions. For example, the Fourth Amendment to the U.S. Constitution protects people from unreasonable searches and seizures by the government. The Fourth Amendment is directed at government action, and searches by private individuals are generally not protected unless the private individual is acting as an instrument or agent of the government at the time of the search. 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.

Common Law. 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 Amended Bill: Prohibition Against Certain Vehicle Searches. An employer or their agent may not search an employee's privately-owned vehicle located on the employer's parking lots, garages, or access roads to such locations. An employee may possess any of their private property within their vehicle, unless possession of such property is otherwise prohibited by law. An employer must not require, as a condition of employment, that an employee or prospective employee waive these 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 lawfully 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 the employee waive consent as a condition of employment. Upon consent, the employee may have a witness present during the search.

Prohibition Against Retaliation. An employer may not take any adverse action against an employee for exercising any right under these provisions. Adverse action means any action taken or threatened by an employer against an employee for exercising the employee's rights under these provisions, and may include, but are not limited to:

- denying the use of, or delaying, wages or other amounts owed to the employee;
- terminating, suspending, demoting, or denying a promotion;
- reducing the number of work hours for which the employee is scheduled;
- altering the employee's preexisting work schedule;
- reducing the employee's rate of pay; and
- threatening to take, or taking action based upon the immigration status of an employee or an employee's family member.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on April 4, 2023.

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

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Second Substitute House Bill (Labor & Commerce): PRO: There are situations where employers are randomly searching through employee vehicles, not tied to safety or anything. We do not want our government unreasonably searching employee vehicles so why would we want our employers doing it? The bill provides adequate protection and still allows searches by law enforcement. The bill has gone through a number of iterations and has broad support. This prevents a rogue supervisor from profiling an employee and randomly searching their vehicle. An employee was disciplined for having an unopened bottle of wine in his car that was on a grocery list.

Persons Testifying (Labor & Commerce): PRO: Representative Ed Orcutt, Prime Sponsor; Joshua Estes, Association of Western Pulp and Paper Workers Union (AWPPW); Bill Sauters, AWPPW - Washington Area Representative; Russ Ipock, AWPPW Washington Area Council - President.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.

Staff Summary of Public Testimony on Second Substitute House Bill (Ways & Means): *The committee recommended a different version of the bill than what was heard.*

PRO: This bill is important to protect employees' safety in the workforce. It allows people to protect themselves to and from work and when doing the things they enjoy afterward. The protections offered in this bill outweigh the implementation costs.

Persons Testifying (Ways & Means): PRO: Amanda Bryant, AWPPW Local 153; Bill Sauters, Association of Western Pulp & Paper Workers Union (AWPPW) - WA Area Rep.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.