

# SENATE BILL REPORT

## EHB 2847

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As Reported By Senate Committee On:  
Labor, Commerce & Trade, February 22, 1996

**Title:** An act relating to prohibiting the department of labor and industries from requiring employers to compensate employees for usual and customary wearing apparel.

**Brief Description:** Prohibiting the department of labor and industries from requiring employers to compensate employees for usual and customary wearing apparel.

**Sponsors:** Representatives Horn, Kessler, Buck, Silver, D. Sommers and Mitchell.

**Brief History:**

**Committee Activity:** Labor, Commerce & Trade: 2/21/96, 2/22/96 [DPA].

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### SENATE COMMITTEE ON LABOR, COMMERCE & TRADE

**Majority Report:** Do pass as amended.

Signed by Senators Pelz, Chair; Heavey, Vice Chair; Deccio, Franklin, Fraser and Newhouse.

**Staff:** Jonathan Seib (786-7427)

**Background:** The Department of Labor and Industries is authorized by statute to adopt rules establishing employment standards for the protection of the safety, health, and welfare of employees and ensuring that wages satisfy the minimum wage prescribed by state law.

In 1976, the department adopted a rule that requires the employer to furnish clothing when the employer requires employees to wear uniforms or other articles of clothing of a specific style and color. However, an employer need not furnish required clothing that is usual and customary and that conforms to a general dress standard. Historically, businesses have operated under an interpretation of the rule that does not require employers to furnish employee's clothing when the required clothing is white shirts or blouses and black slacks or skirts.

In 1992, the department issued a guideline for interpreting this regulation that considered white shirts to be usual and customary clothing that need not be furnished by the employer. However, the guideline would have interpreted black slacks or skirts to be clothing of a specific color which must be furnished by the employer. Reference to "dark" or "light" clothing was not considered to be a specific color, and such clothing was the responsibility of the employee. This guideline was challenged before the Joint Administrative Rules Review Committee and the department was strongly encouraged to take this deviation from a long-standing interpretation through the agency's formal rulemaking process.

Recently, the department indicated that it would proceed with rule-making. The department proposes that employers who require employees to furnish uniforms or clothing of a specific

style or color will be responsible for reimbursing employees when the cost of the clothing reduces the employee's wage rate below the state minimum wage in any payroll week. The state minimum wage is \$4.90 per hour. The department has indicated it will also seek language to clarify that black and white are considered colors, and when required by an employer, may result in reimbursement to the employee if the employee's wage rate falls below the state minimum wage.

**Summary of Amended Bill:** If an employer requires an employee to wear a uniform or other clothing of a specific style or color, it must be provided by the employer. This does not apply to usual and customary clothing in conformance to a general dress standard.

However, an employer who requires an employee to wear black or white clothing not of a specific style is not required to provide the clothing if the employer is an eating or drinking establishment or if the employee is paid at least 35 cents more per hour than the state minimum wage.

The Department of Labor and Industries may order an employer who violates these provisions to reimburse employees and to pay a civil penalty of not more than \$200 for each violation.

**Amended Bill Compared to Original Bill:** Under the engrossed bill, employers would be required to reimburse employees for uniforms only to the extent required under the rule to be adopted by the Department of Labor and Industries. The amended bill requires employers to pay the full cost of uniforms for all employees.

Under the engrossed bill, employers who require employees to wear black or white clothing not of a particular style would not have to pay for the clothing. Under the amended bill, employers would have to pay for such clothing unless they were an eating or drinking establishment or paid the employee at least 35 cents more than the state minimum wage.

The amended bill provides explicit penalties and an immediate effective date. The engrossed bill did not.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** This bill addressed the issue of the extent to which an employer can require a reasonable dress code of employees at work. The bill would continue a practice that has been in place the past 20 years. The department's new rule would be very unfair to certain employers.

**Testimony Against:** This bill would gut the clear meaning of the existing administrative rule and destroy the balance between employer rights and employee rights which it set out to protect. It would shift unreasonable costs from employers to low wage employees who can least afford it.

**Testified:** Representative Horn, prime sponsor; Mark Brown, Department of Labor and Industries; CON: Steve Whipple, Blaine Sherfinski, UFCW; Joseph Bissonnette, HERE; Robby Stern, Jeff Johnson, Washington State Labor Council; PRO: Kit Hawkins, Washington Restaurant Association; Clif Finch, Association of Washington Business.