

HOUSE BILL REPORT

SSB 5443

As Passed House:

April 4, 2007

Title: An act relating to the suppression of workers' compensation claims.

Brief Description: Suppressing workers' compensation claims.

Sponsors: By Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senators Kohl-Welles and Keiser; by request of Department of Labor & Industries).

Brief History:

Committee Activity:

Commerce & Labor: 3/22/07, 3/27/07 [DP].

Floor Activity:

Passed House: 4/4/07, 63-33.

Brief Summary of Substitute Bill

- Defines and prohibits industrial insurance claim suppression by employers.
- Requires the Director of the Department of Labor and Industries (Director) to investigate complaints about claim suppression and grants subpoena authority related to these investigations.
- Grants the Director the authority to waive time limitations for filing an industrial insurance claim in situations where claim suppression is found.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 2 members: Representatives Condotta, Ranking Minority Member and Chandler, Assistant Ranking Minority Member.

Staff: Sarah Beznoska (786-7109).

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

Background:

Industrial insurance is a no-fault state workers' compensation program that provides medical and partial wage replacement benefits to covered workers who are injured on the job or who develop an occupational disease. Employers who are not self-insured must insure with the state fund operated by the Department of Labor and Industries (Department).

When an accident occurs to a worker, the worker has a duty under the Industrial Insurance Act to report the accident "forthwith" to the employer or supervisor in charge of the work. The employer, in turn, has a duty to report the accident and resulting injury "at once" to the Department if the worker has received medical treatment, has been hospitalized or disabled from work, or has died as the apparent result of the injury. An employer is subject to a penalty of \$250 for failing or refusing to report the accident.

Workers must also file a claim application with the Department or self-insured employer, together with a certificate of the attending health services provider. The attending provider must inform the worker of his or her rights under the Industrial Insurance Act and assist the worker in filing the claim application. In 2006, the Legislature directed the Department to implement a pilot program in which employers assist workers in filing workers' compensation claims.

Summary of Bill:

Claim Suppression

Employers are prohibited from engaging in industrial insurance claim suppression. "Claim suppression" means intentionally:

- inducing employees to fail to report injuries;
- inducing employees to treat injuries in the course of employment as off-the-job injuries; or
- acting otherwise to suppress legitimate industrial insurance claims.

Claim suppression does not include bona fide workplace safety and accident prevention programs or an employer's provision of first aid at the worksite. The Department of Labor and Industries (Department) must adopt rules defining bona fide workplace safety and accident prevention programs and defining first aid.

To determine whether an employer has engaged in claim suppression, the Department must consider the employer's history of compliance with reporting requirements and whether the employer has discouraged employees from reporting injuries or filing claims. The Department has the burden of proving claim suppression by a preponderance of the evidence.

Penalties

Employers who engage in claim suppression are subject to a penalty ranging from \$250 to \$2,500 for each offense. The Department must adopt rules establishing the amount of

penalties, taking into account the size of the employer and whether there are prior findings of claim suppression.

Additional penalties include prohibiting the employer from any current or future participation in a retrospective rating program and withdrawing a self-insured employer's certification as a self-insured employer.

Investigations and Subpoena Power

The Director, or the Director's designee, must investigate reports or complaints that an employer has engaged in claim suppression. Any complaint must be received in writing and must include the name or names of the individuals or organizations submitting the complaint. In cases where the Department can show probable cause, the Director is granted the authority to subpoena records from the employer, medical providers, and any other entity that the Director believes may have relevant information. The Director's investigative and subpoena authority is limited solely to investigations into allegations of claim suppression or where the Director has probable cause that claim suppression might have occurred.

Time Limits for Filing Claims

The Director is granted discretionary authority to waive the time limits for filing a claim if the Director determines that an employer has engaged in claim suppression that has caused the worker not to file a timely claim. In order for the Director to have this discretion, the allegation of claim suppression must be received within two years of the worker's accident or exposure and the claim for benefits must be filed with the Department within 90 days of the date the determination of claim suppression is issued.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) This is a bill that the Department of Labor and Industries (Department) believes is very important for injured workers to make sure they are getting the benefits they are entitled to and for employers to make sure there is no competitive benefit that comes from suppressing workers' compensation claims. There are changes reflected in this bill that are the result of discussions with stakeholders.

The negotiating process worked well. This bill would allow the Department a two-year "look back" in terms of complaints of claim suppression. Right now, the statute of limitations for filing a claim for an injury is one year. Once the Department finds that there is claim suppression, then the injured worker who was not properly allowed to file the claim is given 90 days to file a claim for benefits. The 90-day window was well-negotiated.

The intent standard is high, but this is because the bill is not intended to go after legitimate safety programs or entities that inadvertently suppress claims. There are other issues that both sides would have liked to see resolved.

(Opposed) There are already provisions in law related to this issue and self insurers so this bill is redundant for self insurers. The provision allowing two years to file a complaint of claim suppression and allowing the Department to waive the time limits for filing a claim is excessive. If a worker believes that claim suppression has occurred, the worker should file that complaint about claim suppression within the same time frame as a regular claim for benefits would be filed.

Persons Testifying: (In support) Vickie Kennedy, Department of Labor and Industries; and Michael Temple, Washington State Trial Lawyers Association.

(Opposed) Dave Kaplan, Washington Self Insurers Association.

Persons Signed In To Testify But Not Testifying: None.