

SENATE BILL REPORT

SB 5844

As Reported by Senate Committee On:
Labor & Commerce, February 19, 2019

Title: An act relating to protecting the confidentiality of industrial insurance claim records.

Brief Description: Concerning the confidentiality of industrial insurance claim records.

Sponsors: Senators Dhingra, King, Darneille, Keiser, Kuderer, Saldaña and Wagoner.

Brief History:

Committee Activity: Labor & Commerce: 2/14/19, 2/19/19 [DPS].

Brief Summary of First Substitute Bill

- Allows employers or duly authorized representatives to review industrial insurance claim files.
- Requires the Department of Labor and Industries to notify employers and workers upon the allowance of a claim of their rights and responsibilities under this act.
- Subjects an employer to a civil penalty of \$1,000 for each occurrence where the employer or employer's authorized representative reveals information in an injured worker's claim file regarding a mental health condition or treatment to any person other than an authorized representative.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5844 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; King, Ranking Member; Braun, Saldaña, Walsh and Wellman.

Staff: Susan Jones (786-7404)

Background: Workers injured in the course of employment are entitled to medical care under the industrial insurance program administered by the Department of Labor and

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.

Industries (L&I). Physicians or nurse practitioners examining or attending injured workers must comply with L&I's rules, and must make reports, as requested by L&I or a self-insurer, upon the condition or treatment of any worker, or upon any other matters concerning those workers in their care.

Generally, all medical information in the possession or control of any person and relevant to the particular injury in L&I's opinion pertaining to any worker whose injury or occupational disease is the basis of an industrial insurance claim must be made available at any stage of the proceedings to the employer, the claimant's representative, and L&I upon request. No person will incur any legal liability by reason of releasing the information. Workers sign a release authorizing L&I to receive information from the claimant's health care providers regarding the claimant's condition.

Information in claim files and records of injured workers are generally confidential. Employers, or their duly authorized representatives, may review files of their own injured workers in connection with any pending claims.

All workers and employers contribute to the Supplemental Pension Fund, which pays for cost-of-living adjustments for injured workers.

Summary of Bill (First Substitute): Employers, or their duly authorized representatives may review claim files. The department must ensure employers and workers are notified upon the allowance of a claim of their rights and responsibilities under this act.

If the employer or the employer's duly authorized representative reveals information in a claim file regarding a mental health condition or treatment to any person other than a duly authorized representative, the employer is subject to a civil penalty of \$1,000 for each occurrence. L&I must investigate a complaint and issue a notice of assessment if it determines that the employer violated the prohibition. The determination may be appealed. Once the order is final, the penalty amount collected is deposited into the Supplemental Pension Fund.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):

- Removes requirement for an employer to establish a policy regarding storage of injured workers' files.
- Requires L&I to ensure employers and workers are notified upon the allowance of a claim of their rights and responsibilities under this act.
- Removes references to employer's agents and changes them to duly authorized representatives.
- Limits penalties to revealing information in a claim file regarding a mental health condition or treatment.

Appropriation: None.

Fiscal Note: Available.

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 Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill helps protect workers confidentiality when they file an industrial insurance claim. Last session we passed SB 6214, which gives law enforcement officers and firefighters industrial insurance coverage for PTSD that they may develop in the line of work. Unfortunately, this passage has led to unintentional consequences. This bill is an attempt to fix that. A local firefighter filed a PTSD claim last year and ended up with all of his medical information exposed because his therapy notes were attached to the L&I claim. No one should have to have their personal mental health diagnosis exposed in this way. This fixes that issue. It requires employers to establish a written policy regarding the storage of any files of its injured workers to protect confidentiality and imposes civil penalties on employers that reveal confidential information. We have to make sure that our first responders have access to the care and the treatment for PTSD and mental health issues they need, without fearing that the medical information will be exposed for all to see.

L&I has a responsibility to share medical records with employers on claims filed. Unfortunately, the law does not differentiate between physical or mental injuries or illnesses considered mental health claims. It is a common belief in the mental health care field that the dissemination of mental health records is a barrier to seeking care and may be an impediment to ongoing treatment in recovery. We support a worker's compensation process that does not interfere with law enforcement firefighters and paramedics seeking mental health treatment.

We all care about our coworkers. When somebody is hurt or injured or has something wrong, we generally like to talk about what is wrong with the person and how can we help the person. However, sometimes, even with an employer, that goes too far. We have to have a line of things that we should not talk about. An employer learns about issues that should not be talked about. Somebody may be embarrassed and they may not even go get treatment for some of these issues that they desperately need to get better and to be contributing members to the organization. A few folks who would like some small changes to the language.

CON: This bill is not limited to mental health issues. That is kind of the genesis of where this bill came about. It is much broader than that so we do have some concerns. It applies to all industries. A lot of the bill is already taken care of in current law regarding confidentiality. If you go online and access claim information, there's an access agreement on L&I's web site with a list of things that you agree not to do, including participate in the unauthorized use or disclosure by any party of any information accessed. If the department's not enforcing those laws and levying the fines already available to them, then that is another issue.

OTHER: We would like to see it strengthened even further. We need to have our employees have an incentive to go get help without fear it will get out beyond any ears that need to hear it. Subsection 1 of the bill, covers one-half of that equation. We ask you to cover the other

half, representatives of the claimant that have access to that files. They should be held to the confidential standard.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor; Jeff DeVere, Washington Council of Police and Sheriffs; AJ Johnson, Washington State Council of Firefighters.

CON: Tom Kwieciak, Building Industry Association of Washington.

OTHER: Christine Brewer, Washington Self-Insurers Association; James McMahan, Washington Association Sheriffs & Police Chiefs.

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