

# HOUSE BILL REPORT

## SB 5651

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### As Reported By House Committee On:

Commerce & Labor

**Title:** An act relating to restricting actions against employers under industrial insurance.

**Brief Description:** Restricting actions against employers under industrial insurance.

**Sponsors:** Senators Anderson, Newhouse, Schow, Horn and Oke.

### Brief History:

#### Committee Activity:

Commerce & Labor: 3/31/97, 4/3/97 [DPA].

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## HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass as amended. Signed by 5 members: Representatives McMorris, Chairman; Honeyford, Vice Chairman; Boldt; Clements and Lisk.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Conway, Ranking Minority Member; Wood, Assistant Ranking Minority Member; Cole and Hatfield.

**Staff:** Chris Cordes (786-7103).

**Background:** A worker injured in the course of employment generally is compensated under the industrial insurance law for those injuries and is not permitted to bring a civil action against his or her employer. However, if the injury results from the deliberate intention of the employer to produce the worker's injury, the worker may bring suit against the employer for damages in excess of the benefits paid under the industrial insurance law.

What constitutes "deliberate intention" of an employer has been discussed in several Washington appellate court cases. A Washington Supreme Court decision in 1995 reviewed previous cases that required a specific intent to injure the worker by the employer. The court then held that "deliberate intention" means that the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge.

**Summary of Amended Bill:** The Legislature finds that the historic covenant between workers and employers that resulted in the industrial insurance system will not be maintained unless worker law suits against employers are limited to situations in which the employer determined to injure the worker.

To show "deliberate intention" to injure a worker, the court must find that the employer had specific intent to injure the worker. The employer has the specific intent required if the employer acts with the objective or purpose to accomplish the worker's injury, using some means appropriate to that end.

**Amended Bill Compared to Original Bill:** The amended bill deletes the definition of "deliberate intention" under which an employer would be found liable for a worker's injury if the specific purpose of the employer's conduct was to bring about the worker's injury. The amendment adds: (1) an intent statement regarding the importance to the historic covenant between workers and employees of maintaining employer immunity unless the employer determines to injure the worker; and (2) a definition of "deliberate intention" that requires a finding of specific intent to injure the worker.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** This legislation will not impact the outcome of the current court case. The facts in the current litigation have not yet been determined, but there are questions about the exposure to workers and the impact on workers, other than the offensive odor. Regardless of the outcome of that case, other employers could easily become the target of similar lawsuits. This change in the law is needed to avoid having the workers' compensation system become highly litigious and to be able to keep the relatively high benefit structure. The court's standard raises a problem -- for example, how would it apply to modern buildings that do not allow outside air? Could litigation be brought related to employee health problems related to indoor air quality? The worker's compensation no-fault system will be eroded unless the immunity standard is clear. Small businesses cannot afford any increase in litigation. Most small businesses are forced to settle doubtful cases because the cost of litigation is too high.

**Testimony Against:** In 86 years, only three cases have met the "deliberate intention" standard. There is no need to change the standard that all nine members of the court agree on. The question remains whether workers should be sacrificed when the employer has actual knowledge of injury. The bill creates an impossible standard by

requiring a showing of malice. Other incidences of employer knowledge of chemical-related problems have occurred. Testing for air contaminants is problematic since exposure depends on the work that is being done and testing gives time-weighted results. Workers have had to invest their own savings and family savings to fight for their right to benefits.

**Testified:** (In support) V. L. Woolston, The Boeing Company; Clif Finch, Association of Washington Business; and Carolyn Logue, National Federation of Independent Business. (Opposed) Randolph Gordon, Washington State Trial Lawyers Association; Theresa Birklid; Victoria Loney; and Roy Moore.