

SENATE BILL REPORT

SB 5651

As Passed Senate, March 17, 1997

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: 2/18/97, 2/28/97 [DP, DNP].
Passed Senate, 3/17/97, 26-23.

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass.

Signed by Senators Schow, Chair; Horn, Anderson and Newhouse.

Minority Report: Do not pass.

Signed by Senators Franklin, Fraser and Heavey.

Staff: Jonathan Seib (786-7427)

Background: Under Washington law, workers' compensation is generally the only remedy available to an employee injured in the course of employment. Lawsuits by an injured employee against his or her employer are not allowed. However, RCW 51.24.020 provides that if an injury results from the "deliberate intention" of an employer to produce the injury, the bar against suing the employer is removed and the employee is allowed to recover for any damages in excess of the workers' compensation benefits.

Early state court decisions interpreted this language to require that an employee, if he or she wanted to bring an action against an employer, show that the employer had a specific intent to injure the employee. In practice, this limited recovery outside of workers' compensation to only those cases where an employer had actually assaulted an employee.

In 1995, however, the state Supreme Court decided a case in which employees were exposed to noxious chemicals despite their employer's knowledge that such exposure was resulting in injury. In *Birkliid v. Boeing*, the court held that under these circumstances, a jury was justified in finding that the employees had met the standard in RCW 51.24.020 such that recovery outside the limits of workers' compensation was allowed. In doing so, the court interpreted the phrase "deliberate intention" in RCW 51.24.020 to mean that "the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge."

Summary of Bill: For purposes of allowing a cause of action against an employer for injuries resulting from the deliberate intention of the employer, it is provided that a worker's

injury does not result from the deliberate intention of his or her employer unless the specific purpose of the employer's conduct was to bring about the injury. The court is to determine, as a question of law, the purpose of the employer's conduct.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The interpretation given deliberate intent– in the *Birklid* case will result in more litigation, imposing enormous costs that will be particularly hard on small businesses. The new interpretation is almost impossible for employers to understand, leaving them to guess whether or not they are in compliance. If the same standard were imposed on employees under the workers' compensation system, they would oppose it.

Testimony Against: The interpretation of deliberate intent– articulated in *Birklid* is an appropriate one. It recognizes that an employer cannot wilfully sacrifice the health of its workers, even for legitimate business purposes. The interpretation of the law prior to this case made it virtually impossible to prove intentional injury. If that was actually what was intended, the law would have been written differently. The bill would give immunity to bad employers, to the detriment of employees and good employers.

Testified: PRO: V. Woolston, The Boeing Company; Clif Finch, Association of Washington Business; Charles Bush; CON: Randolph Gordon; Robert Dilger, Washington State Building Trades Council; Dan Sexton, United Association of Plumbers and Pipefitters; Mck Ludington, Machinists 751; Robby Stern, Washington State Labor Council; Johanna Wolf, Chemical Injury Coalition.