SENATE BILL REPORT
SB 6356

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, February 1, 2006

Title: An act relating to establishing minimum labor standards for certain large employers as related to health care services expenditures.

Brief Description: Establishing minimum labor standards for certain large employers as related to health care services expenditures.

Sponsors: Senators Kohl-Welles, Keiser, McAuliffe, Franklin, Thibaudeau, Fairley, Prentice and Kline.

Brief History:
Committee Activity: Labor, Commerce, Research & Development: 1/19/06, 2/1/06 [DPS, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 6356 be substituted therefor, and the substitute bill do pass.
Signed by Senators Kohl-Welles, Chair; Franklin, Vice Chair; Brown, Keiser and Prentice.

Minority Report: Do not pass.
Signed by Senators Parlette, Ranking Minority Member; Hewitt and Honeyford.

Staff: Jennifer Strus (786-7316)

Background: No state or federal law requires employers to provide health care benefits to their employees. As a result, employers are free to choose whether to offer health care benefits to their employees; thus, some employees do not have access to health care benefits provided by employers.

Two recent surveys, the National Compensation Survey of Employee Benefits in Private Industry ("National Survey") and the Washington State Employee Benefits Survey ("Washington Survey"), reported on the incidence of access to and participation in medical care plans and other employment-based benefits. They also described how the incidence of medical care varies by establishment size.

The National Survey for 2005 found that 63 percent of private establishments offered health insurance to their workers. Seventy percent of workers in private industry had access to medical care plans, and 53 percent participated in such plans. Nine out of ten larger establishments offered health care benefits to their workers, compared with six out of ten smaller establishments. Workers in medium-sized and large private establishments (those with

100 employees or more) enjoyed higher rates of access to health care benefits than did their counterparts in small establishments.

The "Washington Survey" for 2004 also found that 63 percent of employers provided health care benefits to full-time workers. Large companies with 100 or more workers were more likely to offer benefits. More than 95 percent of large firms offered health insurance to full-time workers, whereas 55 percent of very small firms with two to nine workers offered coverage to full-time workers.

Summary of Substitute Bill: Employers who employ more than 5000 persons must report annually to the director of the Department of Labor and Industries (L&I) their health care expenditures and their payroll for the preceding calendar year. In reporting their payroll, employers may exclude wages paid to employees that are more than 150 percent of the average annual wage and wages paid to employees who are enrolled in or eligible for Medicare.

This act does not apply to the employees of a franchisor's franchise or to those businesses whose purpose is to provide workers to existing employers on a temporary basis. "Temporary" is defined as no more than 90 days.

The reports must be on forms developed by L&I and must be signed by the chief executive officer of the employer or an individual performing similar functions. They must also sign affidavits affirming that they have reviewed the information in the report, that the information is true to the best of their knowledge, information and belief, and that the information does not contain true statements of material fact or omit material facts necessary to make the reports not misleading.

For-profit employers employing more than 5000 persons must spend 9 percent of their payroll on health care services expenditures or pay L&I an amount equal to the difference between what they have actually paid for health care expenditures and the 9 percent. For non-profit and governmental employers required expenditure on health care services is 7 percent of their payroll. Payments are deposited into the Health Services Account.

Employers, both for profit and non-profit, that do not comply with the payroll reporting requirements are assessed a civil penalty of $250 per day, up to a maximum penalty of $7500. Employers that fail to report for more than 30 days are presumed not to have spent any percentage of their payroll on health care services and shall be assessed the amount due, interest of 1 percent per month on the amount due and a civil penalty of $250,000. Employers who report but do not spend the appropriate percentage of their payroll on health care services are assessed the difference between what they should have spent and what they did spend, interest of 1 percent per month on the amount due (the difference) and a civil penalty of $250,000. Civil penalties are deposited into the Health Services Account.

Employers must be afforded the opportunity for a hearing conducted in accordance with the Administrative Procedures Act. If employers fail to pay assessments that are final, the director must refer the matter to the Attorney General to recover these assessments.

The L&I director must administer and enforce the reporting and minimum expenditure requirements. The director also must review reports, inspect records, and conduct investigations and audits to determine that are necessary or appropriate to determine whether an employer is in compliance. Finally, the director must adopt rules necessary to implement the reporting and minimum expenditure requirements.

Substitute Bill Compared to Original Bill: Employees of a franchisor's franchise and those businesses whose purpose is to provide workers to existing employers on a temporary basis are exempted from the act. "Temporary" is defined as no more than 90 days.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Testimony For: If steps are not taken to stop uncompensated care, then the public bears more and more of the cost of health care. Thirty percent of the state budget is dedicated to health care costs; that means there's that much less for education and other programs. There is great concern about the number of uninsured and its effect on the system. In the hospital system, people show up in the emergency room, which is the most expensive and inefficient care, particularly if the reason the person presents is not serious. Hospitals pass these costs onto people with insurance which makes insurance less affordable and the system less fair. There is a current trend toward using part-time and temporary workers to avoid paying benefits to employees and this bill will stem that tide. There are about 20 employers in this state affected by the bill who will have to pay more for health services. Eighty-three percent of the public support requiring companies pay for health benefits for their employees or pay into a health services fund. Businesses used to compete with each other by offering better health benefits; now it's a chase to the bottom.

Testimony Against: This bill is a payroll tax and will raise the cost of doing business in this state. Current businesses will not be able to expand because of this bill. Employers who offer generous benefits will be inclined to lower their benefit package to the state mandated percentage under this bill. Wal-Mart offers a myriad of benefits to employees; it offers 18 different health care plans to its employees. Wal-Mart's expenditures on health care have grown by 15 percent in recent years. Fifty-one percent of Wal-Mart employees have health benefits through Wal-Mart. Seventy-four percent of the workforce has its health insurance through Wal-Mart or other sources. This bill is bad for business and bad policy. The Legislature should address the underlying costs of health care and why businesses cannot afford to offer health care to its employees; this bill does not do that. Once the bill is passed, the threshold percentage that businesses must spend on health care services will continue to increase; that is the fear in the business community. Eighty percent of small businesses are against this bill; 50 percent of small employers don't offer health care benefits and 90 percent would like to. This bill does nothing to reduce the number of uninsured in the state. The definition of employer is very broad and could be interpreted to include franchises and should not.

Who Testified: PRO: Mike Kreidler, Washington State Insurance Commissioner; Len McComb, Washington State Hospital Association & Community Health Network of Washington; Robert Crittenden, Chief, Family Medicine Service, Harborview Medical Center; Julie Yackel, Yakima Valley Hospital; David West, Center for a Changing

Workforce; Robby Stern, WSLC; Randy Joseph, Joseph & Associates; Sean Corry, small business owner; Terry Gardiner, Retired owner and CEO, NorQuest Seafoods; Joe King; Paul Henry, UFCW Local 21; Anthony Walters, Spokane Alliance; Allen Morrow, Washington Senior Lobby.

CON: Mark Johnson, Washington Retail Assn.; Amy Hill, Director of Public Affairs, Wal-Mart Stores; Mellani McAleenan, Association of Washington Businesses; Doris Johnson, Vancouver Bolt & Supply; Susan Fagen, Schweitzer Engineering Labs; Carolyn Logue, NFIB; Gary Smith, IBA; Anthony Anton, Washington Restaurant Association.

Signed in, Unable to Testify & Submitted Written Testimony: Don Barbieri, Chairman of the Board, Red Lion Corp.; Craig Cole, President/CEO, Brown & Cole Stores.