

# HOUSE BILL REPORT

## SHB 1068

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### As Amended by the Senate

**Title:** An act relating to injured workers' rights during compelled medical examinations.

**Brief Description:** Concerning injured workers' rights during compelled medical examinations.

**Sponsors:** House Committee on Labor & Workplace Standards (originally sponsored by Representatives Bronoske, Simmons, Ryu, Goodman, Berry, Bateman, Peterson, Taylor, Doglio, Gregerson, Wylie, Pollet, Davis, Santos, Ormsby and Fosse).

#### Brief History:

##### Committee Activity:

Labor & Workplace Standards: 1/10/23, 1/24/23 [DPS].

##### Floor Activity:

Passed House: 2/15/23, 65-33.

Senate Amended.

Passed Senate: 4/7/23, 31-16.

#### Brief Summary of Substitute Bill

- Allows an injured worker to make an audio and video recording of an independent medical examination, and to have one person of the worker's choosing present during the examination.

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### HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Bronoske, Doglio, Ormsby and Ortiz-Self.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Robertson, Ranking Minority Member; Schmidt, Assistant Ranking Minority Member; Connors.

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

**Staff:** Trudes Tango (786-7384).

**Background:**

In the workers' compensation system, a State Fund or self-insured employer's claim manager may request that an injured worker submit to a medical examination, often called an independent medical exam (IME), to: (1) determine whether to allow or re-open a claim; (2) resolve a new medical issue, an appeal, or case progress; or (3) evaluate a worker's permanent disability or work restriction.

The examinations are performed by medical providers approved by the Department of Labor and Industries (Department). The provider must submit written reports of the examination to the worker, the worker's attending physician, and the person ordering the examination. Generally, information contained in claim files and records of injured workers are confidential and are not subject to public inspection.

Based on the Department's rules, workers are prohibited from recording the examination. The rules allow workers to bring an adult friend or family member to "provide comfort and reassurance" in physical examinations. The worker may not bring a third person in during psychiatric examinations. The person accompanying the worker must not be compensated for attending and may not be the worker's health provider involved in the worker's care or the worker's legal representative or other personnel employed by the worker's legal representative. The Department may determine other conditions under which a worker can have another person present during the examination.

Legislation enacted in 2020 made changes to the medical examination statutes and required the Department to convene a work group to discuss ways to improve the process. The work group issued a report to the Legislature in December 2020. One of the topics the work group discussed was audio and video recording of examinations; however, the work group did not vote on, and the Department did not make recommendations for, recording these medical examinations.

**Summary of Substitute Bill:**

A worker has a right to audio and video record all independent medical examinations, except for examinations conducted by neuropsychologists. The worker must pay the costs of recording. If requested, the worker must provide a copy of the recording to the Department or self-insured employer within 14 days of the request, but not prior to the issuance of the written report of the examination.

The worker must take reasonable steps to ensure the recording equipment does not interfere with the examination. The worker may not hold the recording equipment while the examination is occurring. Benefits received as a result of any material alteration to the recording may be subject to repayment of those benefits.

Recordings are considered confidential as provided under the existing confidentiality statute.

The worker has a right to have one person present to observe the examination. The observer must be at least 18 years old and must be unobtrusive and not interfere with the examination. In addition, the third person observer may not be the worker's legal representative or an employee of the legal representative, or the worker's attending provider or an employee of the attending provider.

**EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment: (1) removes the prohibition on recording exams conducted by neuropsychologists; (2) specifies that the worker may not materially alter the recording; (3) prohibits the worker from posting the recording on social media; (4) requires the worker, no less than seven calendar days before the exam, to provide notice to the scheduling entity indicating that the exam will be recorded; and (5) requires the Department of Labor and Industries to adopt rules regarding the notification process.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) Changing the name of these exams to call them "compelled exams" more closely tracks what they really are. The worker is required to submit to them under the threat of having their benefits suspended. When there are complaints about what the provider did or did not do in the exam, the worker has no way of disputing what the provider says. In other contexts, such as personal injury lawsuits with insurance companies, examinations are recorded without any issues. There needs to be transparency about what happens during these exams. Workers will remain at a disadvantage if they do not have the ability to record these exams. It is often the doctor's word against the worker's word. Sometimes workers are not given the full scope of an exam as they are entitled to, and being recorded will incentivize best behavior from providers.

(Opposed) Changing the name of these exams just sets the process up to be adversarial. These exams are necessary to move claims forward. Allowing recordings would result in fewer doctors willing to do these exams. It is already challenging to get providers and this bill would slow the claim process down. In other contexts when exams are recorded, all the parties must first agree to being recorded and the recordings are done by a third party that

maintains the recordings. There will be chain of custody issues on these recordings. Studies show that during psychiatric exams, the presence of a third person has negative effects and changes the validity and reliability of the test results. Third party observation conflicts with testing standards in neuropsychology. That is not in the patient's best interest. There is no assurance of the quality of recordings and no privacy protections. If there is going to be a recording, it should be done by a licensed videographer.

(Other) Some of the provisions of the bill are already in rules. The Department would likely have information technology costs in order to keep these recordings in the system.

**Persons Testifying:** (In Support) Representative Dan Bronoske, prime sponsor; Brian Wright and Rachel Hamar, Washington State Association for Justice; Seth Worley, Plumbers and Steamfitters United Association Local Union 598; Joe Kendo, Washington State Labor Council, American Federation of Labor and Congress of Industrial Organizations; Chris Carlisle; and Samantha Grad, Teamsters 117.

(Opposed) Kristin McCoy, MES Solutions; Carolyn Logue, Washington Independent Medical Exam Coalition; Wendy Marlowe; Bob Battles, Association of Washington Business; Breck Lebegue; and Tammie Hetrick, Washington Food Industry Association.

(Other) Tammy Fellin, Department of Labor and Industries.

**Persons Signed In To Testify But Not Testifying:** None.