

HOUSE BILL REPORT

HB 1491

As Reported by House Committee On:
Labor & Workplace Standards

Title: An act relating to prohibiting unjustified employer searches of employee personal vehicles.

Brief Description: Prohibiting unjustified employer searches of employee personal vehicles.

Sponsors: Representatives Orcutt, Chapman, Berry, Bronoske, Tharinger and Pollet.

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/8/23, 2/15/23 [DPS].

Brief Summary of Substitute Bill

- Prohibits an employer from searching an employee's vehicle in the employer's parking areas.
- Provides for employee possession of their private property in their vehicle, unless prohibited by law.
- Prohibits retaliation, and provides for investigations and potential civil penalties by the Department of Labor and Industries.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Berry, Chair; Fosse, Vice Chair; Robertson, Ranking Minority Member; Schmidt, Assistant Ranking Minority Member; Bronoske, Connors, Doglio, Ormsby and Ortiz-Self.

Staff: Trudes Tango (786-7384).

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.

Background:

The Department of Labor and Industries (Department) has general investigative and enforcement authority over "conditions of labor" that are unlawful when detrimental to employee health. Conditions of labor include personal privacy. There are no specific statutes or Department rules regarding workplace searches.

Government employers are subject to federal and state constitutional privacy restrictions. Generally, a government actor needs a warrant supported by probable cause to conduct a search of private property, unless an exception applies. In the employment setting, an exception may apply when the employer has a compelling interest and narrowly tailors the search to achieve that interest.

Under common law, courts generally look to the circumstances, context, and nature of a search to determine whether an invasion of privacy has occurred. In the workplace, these factors may include the business reasons for the search, the intrusiveness of the search, and the degree of privacy of the object searched.

Summary of Substitute Bill:

Employers or their agents may not search an employee's privately owned vehicle located on the employer's parking lots, garages, or access roads to the employer's parking lots or garages. An employee may possess any legally possessed private property in the employee's vehicle. An employer must not require, as a condition of employment, that an employee or prospective employee waive those protections.

The prohibition against searches does not apply to:

- vehicles owned or leased by an employer;
- lawful searches by law enforcement officers;
- when a reasonable person would believe that accessing an employee's vehicle is necessary to prevent an immediate threat to human health, life, or safety;
- security inspections on state and federal military installations and facilities;
- vehicles located on state correctional institution premises;
- specific employer areas subject to searches under state or federal law; or
- when an employee consents to a search based on probable cause that the employee unlawfully possesses: employer property; or controlled substances in violation of both federal law and the employer's written policy prohibiting drug use.

The employee's consent must be given immediately prior to the search and the employer may not require that the employee waive consent as a condition of employment. Upon consent, the employee may select a witness to be present during the search.

An employer may not take any adverse action against an employee for exercising any rights

established under these provisions. Adverse action means any action taken or threatened by an employer against an employee for exercising the employee's rights, and may include: (1) denying or delaying wages owed; (2) terminating, suspending, demoting, or denying a promotion; (3) reducing an employee's work hours or altering a preexisting schedule; (4) reducing pay; and (5) taking action or threatening to take action based on the employee's or family member's immigration status.

The Department must investigate complaints and may issue civil penalties of not more than \$1,000 for a first violation, and not more than \$5,000 for subsequent violations. Each employee affected by a violation is a separate violation. Civil penalties are deposited in the supplemental pension fund. Regarding claims involving adverse action, the Department may also order appropriate relief, including ordering payment of any earnings the employee did not receive due to the adverse action, plus interest, and restoring the employee to the employee's former or equivalent position.

The Department may adopt rules to further define "probable cause" and "private property."

Substitute Bill Compared to Original Bill:

The substitute bill:

- specifies that the employee's consent to a vehicle search must be given immediately prior to the search;
- specifies that the employer may not require the employee to waive consent as a condition of employment;
- adds anti-retaliation provisions prohibiting an employer from taking any adverse action against an employee for exercising any the employee's rights;
- adds provisions allowing the Department to enforce the anti-retaliation provision and to order appropriate relief;
- allows the Department to adopt rules to further define "probable cause" and "private property;" and
- changes the effective date to July 1, 2024, rather than January 1, 2024.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 15, 2023.

Effective Date of Substitute Bill: The bill takes effect on July 1, 2024

Staff Summary of Public Testimony:

(In support) This bill has been heard for several sessions. It will protect employees from arbitrary searches of their vehicles. This should be protected by the Constitution but is not. Employers conduct searches on a whim without any probable cause that the employee is in

possession of property that is illegal. Employees have been disciplined for having legal items, such as an unopened bottle of wine or unopened beer, in their cars. Under the bill, employers would still have a right to search vehicles under probable cause circumstances.

(Opposed) None.

(Other) It is unclear how the Department will implement this bill as written. The Department would have to determine whether there was legitimate probable cause reasons to search and the Department generally does not make those types of determinations. There is no retaliation provision in the bill. The Department needs rulemaking authority and the bill will impact the Department's information technology system because this creates a new type of complaint that can be filed.

Persons Testifying: (In support) Representative Ed Orcutt, prime sponsor; Joshua Estes, Association of Western Pulp and Paper Workers; Justin Welte, Association of Western Pulp and Paper Workers Local 580; Russ Ipock, Association of Western Pulp and Paper Workers Washington Area Council; and Bill Sauters, Association of Western Pulp and Paper Workers Washington.

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

Persons Signed In To Testify But Not Testifying: None.