

SENATE BILL REPORT

2SHB 1491

As of March 16, 2023

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

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

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Orcutt, Chapman, Berry, Bronoske, Tharinger and Pollet).

Brief History: Passed House: 3/2/23, 87-10.

Committee Activity: Labor & Commerce: 3/16/23.

Brief Summary of Bill

- Prohibits an employer from searching an employee's vehicle in the employer's parking areas, subject to certain exceptions.
- Prohibits an employer from retaliating against an employee for exercising any rights under the legislation.
- Authorizes the Department of Labor and Industries to investigate employee complaints and collect specified civil penalties.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Matt Shepard-Koningsor (786-7627)

Background: Industrial Welfare Act. The Department of Labor and Industries (L&I) has authority to investigate and regulate conditions of labor under the Industrial Welfare Act (IWA). Conditions of labor include, among other things, requirements for employing minors, meal and rest periods, and provisions for personal privacy. With limited exceptions, the IWA applies to most employers and employees in Washington. There are no specific statutes or L&I rules regarding workplace searches. Employers violating the

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IWA may be subject to criminal and civil penalties.

Constitutional Privacy Restrictions. Government employers are subject to federal and state constitutional privacy restrictions. For example, the Fourth Amendment to the U.S. Constitution protects people from unreasonable searches and seizures by the government. 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.

Common Law. 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 Bill: Prohibition Against Certain Vehicle Searches. An employer or their agent may not search an employee's privately-owned vehicle located on the employer's parking lots, garages, or access roads to such locations. An employee may possess any of their private property within their vehicle, unless possession of such property is otherwise prohibited by law. An employer must not require, as a condition of employment, that an employee or prospective employee waive these 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;
- when the employer requires or authorizes the employee to use the employee's vehicle for work-related activities and the employer needs to inspect the vehicle to ensure it is suited to conduct the work-related activities;
- 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 lawfully 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 the employee waive consent as a condition of employment. Upon consent, the employee may have a witness present during the search. L&I may adopt rules to further define the terms probable cause and private property.

Prohibition Against Retaliation. An employer may not take any adverse action against an employee for exercising any right under these provisions. Adverse action means any action

taken or threatened by an employer against an employee for exercising the employee's rights under these provisions, and may include, but are not limited to:

- denying the use of, or delaying, wages or other amounts owed to the employee;
- terminating, suspending, demoting, or denying a promotion;
- reducing the number of work hours for which the employee is scheduled;
- altering the employee's preexisting work schedule;
- reducing the employee's rate of pay; and
- threatening to take, or taking action based upon the immigration status of an employee or an employee's family member.

Investigation and Enforcement. L&I must investigate employee 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. L&I may collect the costs of investigation and enforcement. Each employee affected is a separate violation. L&I must collect civil penalties and costs using procedures under the Wage Payment Act, and deposit civil penalties in the supplemental pension fund. For claims involving an adverse employer action, L&I 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 their former or equivalent position. An appeal from an L&I determination may be taken in accordance with the Administrative Procedure Act.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on July 1, 2024.

Staff Summary of Public Testimony: PRO: There are situations where employers are randomly searching through employee vehicles, not tied to safety or anything. We do not want our government unreasonably searching employee vehicles so why would we want our employers doing it? The bill provides adequate protection and still allows law enforcement searches. The bill has gone through a number of iterations and has broad support. This prevents a rogue supervisor from profiling an employee and randomly searching their vehicle. An employee was disciplined for having an unopened bottle of wine in his car that was on a grocery list.

Persons Testifying: PRO: Representative Ed Orcutt, Prime Sponsor; Joshua Estes, Association of Western Pulp and Paper Workers Union (AWPPW); Bill Sauters, AWPPW - Washington Area Representative; Russ Ipock, AWPPW Washington Area Council - President.

Persons Signed In To Testify But Not Testifying: No one.