

SENATE BILL REPORT

ESB 5632

As Amended by House, February 28, 2024

Title: An act relating to protecting the health care of workers exercising their right to participate in a labor dispute.

Brief Description: Protecting the health care of workers participating in a labor dispute.

Sponsors: Senators Keiser, Cleveland, Conway, Hasegawa, Hunt, Kuderer, Lovelett, Stanford, Valdez and Wilson, C..

Brief History:

Committee Activity: Health & Long Term Care: 2/02/23 [w/oRec-LC].

Labor & Commerce: 2/06/23, 2/13/23 [DP-WM, DNP].

Ways & Means: 2/21/23, 2/23/23 [DP, DNP, w/oRec].

Floor Activity: Passed Senate: 3/3/23, 29-19; 2/2/24, 30-19.

Passed House: 2/28/24, 56-38.

Brief Summary of Engrossed Bill

- Requires the Health Benefit Exchange to administer a worker health plan access assistance program for employees who lose employer-provided health care coverage as a result of an active labor dispute.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; Robinson and Stanford.

Minority Report: Do not pass.

Signed by Senators King, Ranking Member; Braun, MacEwen and Schoesler.

Staff: Jarrett Sacks (786-7448)

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.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Billig, Conway, Dhingra, Hasegawa, Hunt, Keiser, Nguyen, Pedersen, Saldaña, Van De Wege and Wellman.

Minority Report: Do not pass.

Signed by Senators Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Boehnke, Muzzall, Torres and Wagoner.

Minority Report: That it be referred without recommendation.

Signed by Senators Rivers, Assistant Ranking Member, Capital; Braun.

Staff: Sandy Stith (786-7710)

Background: The Affordable Care Act and the Washington Healthplanfinder. Under the federal Patient Protection and Affordable Care Act (ACA), each state must establish a health benefit exchange through which consumers may compare and purchase individual and small group coverage, access premium and cost-sharing subsidies, and apply for Medicaid coverage. Qualified health plans (QHPs) sold in an exchange must meet certain standardized actuarial values. The tiers of coverage are based on how much of the health care costs the insurer is required to cover: Bronze—60 percent, Silver—70 percent, Gold—80 percent, and Platinum—90 percent. Washington's health benefit exchange, the Washington Healthplanfinder, is a public-private partnership governed by a board consisting of members with expertise in the health care system and health care coverage.

The ACA also requires all United States citizens and legal residents to have health insurance coverage or pay a tax penalty. However, the tax penalty was repealed by subsequent federal legislation. Minimum essential coverage is any health plan that meets the ACA's requirements for having health coverage.

In general, under the ACA, employers with 50 or more full-time employees are required to offer minimum essential coverage to their full-time employees.

Health Insurance Coverage and Labor Disputes. In general, there is no requirement that an employer continue health insurance coverage for striking employees. Under National Labor Relations Board precedent, employers are prohibited from unilaterally changing the terms of employee health insurance for striking employees, but the employer is not obligated to provide compensation, such as insurance coverage, during a strike. However, the employer must maintain any accrued benefits to strikers once they return to work.

The federal Consolidated Omnibus Budget Reconciliation Act (COBRA) requires

employers with more than 20 employees who provide group health insurance to give employees the option to purchase continued coverage for a limited time under the plan if they are separated from work. Under COBRA, the employee pays the full premium. The employer may charge the employee up to 102 percent of the cost of the plan, 2 percent of which covers administrative costs.

Summary of Engrossed Bill: By January 1, 2025, the Health Benefit Exchange must administer a worker health plan access assistance program (program) for Washingtonians who lose employer or joint labor management trust-provided health care coverage as a result of an active strike, lockout, or other labor dispute.

Subject to the availability of state funding appropriated for this purpose, an individual and their dependents are eligible for the program if the individual:

- provides a self-attestation regarding loss of minimal essential health care coverage from an employer or joint labor management trust fund as a result of an active strike, lockout, or other labor dispute;
- enrolls in a Silver standardized health care plan through the exchange;
- applies for and accepts all applicable federal and state subsidies for which the household may be eligible;
- is ineligible for minimum essential coverage through Medicare, a federal or state medical assistance program administered by the Health Care Authority, or Compact of Free Association premium assistance; and
- is eligible to purchase a qualified health plan through the Health Benefit Exchange.

The Health Benefit Exchange may disqualify a participant from the program if the participant:

- no longer meets the eligibility criteria for the program;
- fails, without good cause, to comply with procedural documentation requirements established by the Health Benefit Exchange;
- fails, without good cause, to notify the Health Benefit Exchange when minimum essential coverage provided by the employer or joint labor management trust is reinstated;
- voluntarily withdraws from the program; or
- performs an act, practice, or omission that constitutes fraud.

The Health Benefit Exchange must establish procedural and documentation requirements for the program, as well as procedural requirements for facilitating payments to and from carriers.

Appropriation: The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony (Labor & Commerce): PRO: People who have ongoing medical conditions who end up in labor dispute are worried they will lose health insurance coverage during labor dispute. The bill would provide a safety net and cover that gap in coverage. The pandemic demonstrated inequalities in work and workers are going on strike to fight for their rights. Workers should not be penalized for going on strike by losing their health care coverage. The bill would provide for the gap in coverage.

Persons Testifying (Labor & Commerce): PRO: Senator Karen Keiser, Prime Sponsor; April Sims, Washington State Labor Council.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.

Staff Summary of Public Testimony (Ways & Means): PRO: Workers who strike lose their paychecks and sometimes their health care. This bill will create a safety net for them which will reduce fear of striking. Healthcare access shouldn't be a point of leverage during a strike or lockout. Workers shouldn't have to choose between compensation or fighting for better working conditions. Few workers will have to access this, and it should have a low fiscal impact.

Persons Testifying (Ways & Means): PRO: Senator Karen Keiser, Prime Sponsor; Joe Kendo, Washington State Labor Council, AFL-CIO.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.

EFFECT OF HOUSE AMENDMENT(S):

- Codifies the provision under the Washington Health Benefit Exchange (HBE), rather than under the chapter governing employee benefit plans.
- Makes the requirement subject to available funds, rather than subject to amounts specifically appropriated for the purposes of the bill.
- Removes provisions specifying conditions to receive enrollment assistance, and instead requires the HBE to provide enrollment assistance to individuals who provide a self-attestation and who are eligible for coverage offered through the exchange.
- Removes certain provisions related to qualifications and financial assistance to align with changes made to the bill.
- Provides that the HBE may request information to conduct outreach and determine eligibility for federal and state subsidies, rather than eligibility for financial assistance, offered through the exchange.