

HOUSE BILL REPORT

HB 2239

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 Blake, Walsh, Orcutt, Lovick and Appleton.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/13/20, 1/30/20 [DPS].

Brief Summary of Substitute Bill

- Prohibits certain searches of employee vehicles in employer parking areas.
- Provides for employee possession of their property, unless prohibited by law.
- 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 5 members: Representatives Sells, Chair; Chapman, Vice Chair; Gregerson, Hoff and Ormsby.

Minority Report: Do not pass. Signed by 2 members: Representatives Mosbrucker, Ranking Minority Member; Chandler, Assistant Ranking Minority Member.

Staff: Lily Smith (786-7175).

Background:

The Department of Labor and Industries (Department) has general investigative and enforcement authority over conditions of labor, which are unlawful when detrimental to

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employee health. Conditions of labor include personal privacy. There are no specific statutes 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:

Employer searches of employee-owned vehicles within employer parking lots, garages, or access roads are prohibited. An employee may possess their property within their vehicle, except where prohibited by law. Employers may not condition employment on a waiver of these provisions.

Exceptions to the provisions apply to:

- employer-leased vehicles;
- lawful searches by law enforcement;
- when necessary to prevent an immediate threat; and
- when an employee consents to a search based on probable cause of unlawful possession of employer property or a controlled substance.

The Department must investigate employee complaints and may impose a civil penalty of up to \$1,000 for a first violation and up to \$5,000 for subsequent violations.

Substitute Bill Compared to Original Bill:

The substitute bill:

- provides exemptions for: (1) vehicles at correctional institutions; (2) security inspections of vehicles on military installations and facilities; and (3) employer areas that are subject to searches under state or federal law;
- specifies that the provision for employee possession of their property within their vehicle does not apply where possession would otherwise be prohibited by law, and that an employer may not condition employment on a waiver of that provision;
- modifies the provision for consented searches to: (1) add business owners or agents as entities that may perform a search; (2) allow searches under probable cause for a controlled substance in certain circumstances; (3) require notice to employees that their vehicles may be subject to search; and (4) allow for an employee to select a witness to be present during the search; and
- adds an effective date of January 1, 2021.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on January 1, 2021.

Staff Summary of Public Testimony:

(In support) When an employee goes to work in their own vehicle, they should not be required to open up the vehicle to a search for no reason. Some employees face unjustified searches that may produce legally owned items that subject the employee to discipline under workplace policy. Private sector employees are not protected by the same basic protections against searches as are public sector employees. The bill provides that basic protection and ensures noncompliance is appropriately dealt with.

(Opposed) There should be provisions to protect small business owners, such as allowing an owner or owner's agent to do searches when the business does not have private security. Many small owners do not have licensed security on hand for searches and would need to wait for law enforcement to arrive. Consented searches should also be allowed when there is probable cause of possession of a controlled substance in violation of law and an employer's policy. It should be possible to protect fundamental rights while ensuring safety.

(Other) As this would be a new type of work in a new area for the Department, it will take time to develop the appropriate policies, rules, and technology systems to appropriately implement and track the enforcement obligations. There will be costs associated with this new work.

Persons Testifying: (In support) Representative Blake, prime sponsor; Joshua Estes and William Sauters, Association of Western Pulp and Paper Workers.

(Opposed) Patrick Connor, National Federation of Independent Business.

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

Persons Signed In To Testify But Not Testifying: None.