

SENATE BILL REPORT

SHB 1068

As of March 14, 2023

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

Committee Activity: Labor & Commerce: 3/14/23.

Brief Summary of Bill

- Allows an injured worker in a workers' compensation claim to make an audio and video recording of an independent medical examination, and to have a person of the worker's choice present during the examination.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Susan Jones (786-7404)

Background: Workers' Compensation—General. Workers who, in the course of employment, are injured or disabled from an occupational disease are entitled to workers' compensation benefits, which may include medical, temporary time-loss, vocational rehabilitation benefits, and permanent disability benefits (pensions). The Department of Labor and Industries (L&I) administers the state's workers' compensation system.

Independent Medical Exams. A worker must submit to examination by a physician or physicians selected by L&I, referred to as an independent medical exam (IME), whenever L&I or the self-insurer deems it necessary for certain purposes. The purposes are to (1) make a decision regarding claim allowance or reopening, (2) resolve a new medical issue,

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.

an appeal, or case progress, or (3) evaluate the worker's permanent disability or work restriction.

Examination means a physical or mental examination by a medical care provider licensed to practice medicine, osteopathy, podiatry, chiropractic, dentistry, or psychiatry at the request of L&I, a self-insured employer, or the Board of Industrial Insurance Appeals (BIIA).

A written report must be provided to the person ordering the examination, the attending physician, and the injured worker.

Independent Medical Exam—Reasonable Location. The IME must be at a place reasonably convenient to the injured worker, or alternatively utilize telemedicine if L&I determines telemedicine is appropriate. Reasonably convenient means at a place where residents in the injured worker's community would normally travel to seek medical care for the same specialty as the examiner. L&I is required to address in rule how to accommodate the injured worker if no approved medical examiner in the specialty needed is available in that community.

Records and Costs. L&I or self-insurer must provide the physician performing an examination with all relevant medical records from the worker's claim file. The L&I director may charge the cost of such examination or examinations to the self-insurer or to the medical aid fund. The cost of the IME includes payment to the worker of reasonable expenses connected with the IME.

Summary of Bill: Recording Independent Medical Exams. The worker has the right to record the audio, video, or both, of all IMEs ordered by L&I, the self-insured employer, or by BIIA. However, examinations conducted by a neuropsychologist may not be audio or video recorded. The worker must take reasonable steps to ensure the recording equipment does not interfere with the IME. The worker may not hold the recording equipment while the IME is occurring. The worker is responsible for paying the costs of recording.

Upon request, the worker must provide one copy of the recording to L&I or the self-insured employer within 14 days of receiving the request, but not before the issuance of a written report. These recordings are confidential.

Workers' compensation benefits received as a result of any material alteration of the recording by the worker or done on the worker's behalf may be subject to repayment.

Observer During Independent Medical Exams. The worker has the right to have one adult of the worker's choosing, to be present to observe all IMEs ordered by L&I, a self-insurer, or by BIIA. The observer must be unobtrusive and not interfere with the exam. The observer may not be the worker's legal representative, an employee of the legal representative, the worker's attending provider, or an employee of the worker's attending provider.

Appropriation: None.

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.