

SENATE BILL REPORT

SHB 1068

As Reported by Senate Committee On:
Labor & Commerce, March 23, 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, 3/23/23 [DPA, DNP].

Brief Summary of Amended 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

Majority Report: Do pass as amended.

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: 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'

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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, 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 Amended 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. 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.

The worker may not materially alter the recording. 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. The worker may not post the recording to social media.

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.

EFFECT OF LABOR & COMMERCE COMMITTEE AMENDMENT(S):

- Removes the prohibition on recording neuropsychological exams. Prohibits the worker from materially altering the recording or posting it to social media.

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.

Staff Summary of Public Testimony on Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill adds integrity and transparency to workers comp exams. Recording is necessary, keeps doctors honest and accountable. There needs to be witnesses. This bill is imperative to give workers protections. It is currently the doctor's word against the patients, and they can call their patients liars and don't document their patients concerns. Doctors who do not consent to being recorded will not be hired, as that will be an integral part of the job. This bill is similar to adding body cameras to police forces, and it will similarly improve the profession. Injured workers should not have to hire an attorney to prove that they are not liars, con artists, or "druggies," against their doctor's claims.

CON: Recording is not recommended and violates the two-party consent rule. The confidential relationship and conversations between doctor and patient should be protected. There are reasonable changes that could be made to make this bill more palatable, including protecting the video recordings and making them immediately available to both the doctor and patient. There are concerns about the reliability of videos that are not professionally produced, as video editing is increasingly easy. These videos could also be misused and shared out of confidentiality. Workers will not be willing to discuss their most private and sensitive issues in the presence of a camera or third-party friend or family member.

Persons Testifying: PRO: Representative Dan Bronoske, Prime Sponsor; Thomas Kelly; Chris Carlisle, Carlisle + Byers; Jamison Smith; Ryan Nute, Washington State Association for Justice; Robert Brown; Bill Hochberg, Washington State Association for Justice; Robert Canfield; Brenda Wiest, Teamsters Local 117; John Traynor, Washington State Labor Council, AFL-CIO.

CON: ROSE GUNDERSEN, Washington Retail Association; Wendy Marlowe; Samantha Louderback, Washington Hospitality Association; Tammie Hetrick, Washington Food Industry Association; Kris Tefft, Washington Self-Insurers Association; Christine Brewer, MES Solutions; Eugene Toomey, 2760 76th ave SE; Patrick Connor, NFIB.

Persons Signed In To Testify But Not Testifying: OTHER: Brenda Heilman, Labor & Industries.