

HOUSE BILL REPORT

SSB 5402

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to industrial insurance penalties.

Brief Description: Revising provisions related to industrial insurance penalties.

Sponsors: Senate Committee on Labor, Commerce & Trade (originally sponsored by Senators Pelz and Franklin; by request of Department of Labor & Industries).

Brief History:

Committee Activity:

Commerce & Labor: 3/22/95, 3/30/95 [DPA].

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 10 members: Representatives Lisk, Chairman; Hargrove, Vice Chairman; Thompson, Vice Chairman; Romero, Ranking Minority Member; Conway, Assistant Ranking Minority Member; Cairnes; Cody; Cole; Goldsmith and Horn.

Staff: Chris Cordes (786-7117).

Background:

Fraud provisions in industrial insurance law

An employer who misrepresents the amount of his or her payroll to the Department of Labor and Industries is liable for 10 times the difference in the premiums paid and the premiums that should have been paid, and the reasonable expenses of the department in collecting the difference. If the misrepresentation is made knowingly, the employer is guilty of a felony or gross misdemeanor under the theft statutes.

If the payment of benefits to a worker has been induced by fraud, the worker must repay the benefits and a penalty of 50 percent of the benefits. The repayment may be recouped from any future benefits to which the worker becomes entitled. If a worker claiming benefits knowingly gives false information required in the claim or application, the worker is guilty of a felony or gross misdemeanor under the theft statutes.

Any person, firm, or other legal entity that obtains or attempts to obtain payment in a greater amount than is authorized under the industrial insurance law by knowingly billing for services or supplies that were not furnished or were substituted for other items, or repeatedly billing for covered items that are not covered, or by making a wilful false statement or misrepresentation, is liable for repayment of the excess payments and interest and civil penalties not exceeding \$1,000 or three times the amount of the excess payment, whichever is greater. Criminal penalties are also imposed for making knowing false statements or concealing material information and other similar conduct.

Procedures for employer default on premiums

If an employer defaults on a payment due to the department, the department must serve a notice of assessment by certified mail, accompanied by an affidavit of service by mailing. To collect outstanding industrial insurance premiums, the department may issue a notice to any person, business, or government agency to withhold and deliver property that belongs to the business owing the premiums. The notice must be served by the county sheriff's department or by the director's authorized representative.

Liability for predecessor employer premiums

A person who purchases a business may be liable for industrial insurance premiums that the business owed to the Department of Labor and Industries prior to the sale. However, the successor owner will not be liable for the back premiums if the successor owner notifies the department of the purchase of the business and the department does not issue a notice of assessment against the business within 60 days. Because employers pay premiums on a quarterly basis, a default on premium payments by the predecessor employer may not be known within the 60 day period.

Benefits for certain beneficiaries of injured workers

If an injured worker dies from his or her industrial injury or disease, the beneficiaries of the worker are entitled to compensation under the industrial insurance law. However, if the worker's injury or death results from the deliberate intention of the worker to produce the injury or death, or while the worker commits or attempts to commit a felony, the worker and his or her beneficiaries are not entitled to benefits. The statute does not address an injury or death to the worker resulting from the act of the beneficiary in similar circumstances.

If a worker receiving industrial insurance benefits subsequently becomes convicted, sentenced, and confined in an institution, the worker's benefits are cancelled during the period of confinement. Benefits are also cancelled during the period of confinement for a worker who becomes eligible for benefits while in confinement

under conviction and sentence. These provisions do not address cancellation of benefits for a beneficiary who is or becomes incarcerated.

Summary of Amended Bill:

Fraud provisions in industrial insurance law

The penalty to which an employer is subject for misrepresenting his or her payroll is also applied to misrepresenting the amount of employee hours.

The Department of Labor and Industries is directed to compile an annual comprehensive report on workers' compensation fraud in the state. The report must include information about prevention, detection, and prosecution of workers, employers, and providers committing fraud. It will also include the actual or estimated cost savings from fraud prevention activities. The report will be submitted to the Legislature before the start of each January session.

Procedures for employer default on premiums

If an employer defaults on payments due to the department, the department may serve the notice of assessment by certified mail without the requirement for an affidavit of service by mailing. Notices to withhold and deliver a business's property for industrial insurance premium collection purposes may, as an alternative to personal service, be served by certified mail with return receipt requested.

Liability for predecessor employer premiums

If a successor owner acquires a business owing industrial insurance premiums, the Department of Labor and Industries must issue any outstanding premium assessment against the business within 180 days, rather than 60 days, from the receipt of notice from the successor owner.

Benefits for certain beneficiaries of injured workers

An injured worker's beneficiary is not entitled to industrial insurance benefits if the worker's injury resulted from the deliberate intention of the beneficiary to cause the injury or from the beneficiary committing or attempting to commit a felony. A beneficiary is not entitled to benefits while incarcerated under conviction and sentence. These provisions apply from the effective date of the act without regard to the date of injury or the date of filing a claim.

Amended Bill Compared to Substitute Bill: The amendment provides that (1) an injured worker's beneficiary is not entitled to industrial insurance benefits if the worker's injury resulted from the deliberate intention of the beneficiary to cause the

injury or from the beneficiary committing or attempting to commit a felony; and (2) a beneficiary is not entitled to benefits while incarcerated under conviction and sentence. These provisions apply from the effective date of the act without regard to the date of injury or the date of filing a claim.

Appropriation: None.

Fiscal Note: Requested on March 31, 1995.

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

Testimony For: This is a compromise bill with provisions worked out to address concerns. The bill corrects an anomaly in the statute because misreporting payroll is fraud, but the industrial insurance premiums are based on employee hours, not on payroll.

Testimony Against: None.

Testified: Mike Watson, Department of Labor and Industries; and Clif Finch, Association of Washington Business.