

# HOUSE BILL ANALYSIS

## SB 5570

**Brief Description:** Expanding tax evasion penalties.

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**Sponsors:** Senate Committee on Commerce & Labor (originally sponsored by Senators Newhouse, Schow, Horn, Heavey, Franklin, Fraser, and Oke; by request of the Joint Task Force on Nonpayment of Employer Obligations)

Hearing: March 24, 1997

### **BACKGROUND:**

#### **PENALTIES UNDER THE INDUSTRIAL INSURANCE LAW**

*Employer penalties for failing to insure workers.* Employers subject to the state's industrial insurance law must either be insured with the state fund administered by the Department of Labor and Industries or be self-insured.

Employers who fail to insure their workers are subject to a maximum penalty of \$500 or double the amount of premiums that were incurred before coverage was obtained, whichever is greater. Employers are also liable for a penalty of 50 to 100 percent of the cost of benefits paid to a worker who is injured before coverage is obtained.

If the employer willfully fails to obtain coverage, the employer is guilty of a misdemeanor with a fine of \$25 to \$100. Each day of violation is a separate offense.

Penalties and fines are deposited in either the medical aid or accident funds, as directed by statute.

*Employer penalties for misrepresentation.* An employer who misrepresents the amount of his or her payroll or employee hours on which the industrial insurance premium is based is liable for 10 times the difference in the amount of premiums paid and the amount that should have been paid. If the misrepresentations are knowing, the employer is guilty of a felony or gross misdemeanor under the applicable theft provisions of the state's criminal code.

*Penalties for workers and providers who make misrepresentations.* A person who claims industrial insurance benefits and who knowingly gives false information in an application is guilty of a felony or gross misdemeanor under the applicable theft provisions of the state's

criminal code. A person or legal entity that knowingly makes false statements of material facts used in determining rights to payment under the industrial insurance law is guilty of a class C felony.

*Task force recommendations.* In 1996, Substitute House Bill 2513 created the Task Force on Nonpayment of Employer Obligations. The task force was directed to make recommendations on, among other issues, methods of improving compliance with employer responsibilities for covering workers under state industrial insurance law and other laws.

The task force report in December, 1996, included a recommendation that the Legislature should eliminate the employer misrepresentation provisions under the industrial insurance law and add new felony provisions addressing employers who knowingly, with an intent to defraud, make false representations about their obligations or fail to file required information. The task force reported that agency personnel could not recall the prosecution of any employer for failure to insure under the current misdemeanor statute.

## **PENALTIES UNDER STATE REVENUE LAW**

Most businesses are required to register with the Department of Revenue and file business and occupation tax returns. It is a class C felony for a person or entity to engage in business after the revocation of its certificate of registration or to make a false tax return or false statement in a tax return to the Department of Revenue, with intent to defraud the state or evade payment of tax.

## **STATUTE OF LIMITATIONS FOR FELONIES PROSECUTIONS**

The Washington criminal code provides time limits for the prosecution of certain criminal offenses. Felonies subject to limitations generally must be prosecuted within three years of the commission of the crime unless the statute specifically grants a longer statute of limitations.

## **SUMMARY OF BILL:**

## **PENALTIES UNDER THE INDUSTRIAL INSURANCE LAW**

The penalty for an employer who misrepresents the amount of payroll or hours is made a maximum of 10 times the difference in premium paid and premium that should have been paid. The application of the penalty is limited to intentional misrepresentation.

The criminal penalties for an employer who knowingly misrepresents its payroll or hours under the state criminal code's theft provisions are deleted and new felony provisions are added. Under the new felony provisions, it is a class C felony for a person or corporation

to:

- knowingly, with intent fraudulently to evade premium payments, to make a false statement or representation of a material fact in a report or other written document, or electronic transmittal, in connection with the obligation to pay premiums.
- knowingly, with intent fraudulently to evade premium payments, to accept assertions that contain materially false information in connection with the obligation to pay premiums.
- having knowledge of a event material to determination of the obligation to pay premiums, to conceal or fail to disclose the event with intent fraudulently to secure a determination of a lesser amount than is owed.
- having knowledge of the obligation to notify the department, to conceal, fail to file or disclose information with an intent fraudulently to evade premium payments.

In addition to other penalties provided by law, an employer convicted of a class C felony under these new provisions is subject to not more than five years in prison and up to a \$25,000 fine (up to \$100,000 for a corporation). On conviction, the court must order the employer to pay the premiums due, pay a penalty equal to the premiums due, and pay interest from the time the premium was due.

The premiums and interest collected by the court must be transmitted to the Department of Labor and Industries. The additional penalty collected by the court must be disbursed one-third to the involved law enforcement and investigative agencies, one-third to the prosecuting attorney, and one-third to the general fund of the county whether the prosecution occurred.

## **STATUTES OF LIMITATIONS FOR FELONY PROSECUTIONS**

The new class C felony provisions for employer misrepresentation must be prosecuted within five years after the commission of the felony. The statute of limitations for the following class C felonies are changed from a three-year statute of limitations to a five-year statute of limitations:

- applicable felony theft prosecutions under the criminal code for persons claiming industrial insurance benefits who knowingly give false information required in a claim application.
- prosecutions of persons or legal entities who knowingly make false statements of material facts in connection with an application for payment for industrial insurance services or, having knowledge of an event affecting the right to payment, conceal or

fail to disclose the event with intent fraudulently to secure greater payment than is due.

- prosecutions of persons who engage in business in the state after revocation of their certification of registration with the Department of Revenue or who make a false tax return or false statement in a tax return to the Department of Revenue, with intent to defraud the state or evade payment of tax.

**RULES AUTHORITY:** The bill does not contain provisions addressing the rule-making power of an agency.

**FISCAL NOTE:** Available.

**EFFECTIVE DATE:** Ninety days after adjournment of session in which bill is passed.