

SENATE BILL REPORT

SSB 5227

As Amended by House, April 9, 2013

Title: An act relating to the corporate officer provisions of the employment security act.

Brief Description: Changing the corporate officer provisions of the employment security act.

Sponsors: Senate Committee on Commerce & Labor (originally sponsored by Senators Schoesler, Holmquist Newbry, Delvin, Hatfield, Shin, King, Hobbs, Sheldon, Padden, Honeyford, Dammeier and Roach).

Brief History:

Committee Activity: Commerce & Labor: 2/04/13, 2/15/13 [DPS, DNP, w/oRec].

Passed Senate: 3/05/13, 38-11.

Passed House: 4/09/13, 94-0.

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: That Substitute Senate Bill No. 5227 be substituted therefor, and the substitute bill do pass.

Signed by Senators Holmquist Newbry, Chair; Braun, Vice Chair; Hewitt and King.

Minority Report: Do not pass.

Signed by Senator Hasegawa.

Minority Report: That it be referred without recommendation.

Signed by Senator Keiser.

Staff: Mac Nicholson (786-7445)

Background: Corporate officers living in Washington are automatically covered for unemployment insurance. Corporations may exempt corporate officers for the purposes of unemployment insurance and not pay state unemployment taxes on them if they meet certain criteria, depending on the type of corporation. Exempt officers will not be eligible to receive unemployment benefits. Corporations that exempt corporate officers from state unemployment taxes may still be required to pay federal unemployment taxes on wages earned by the corporate officers.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Corporations must also register with the Employment Security Department (ESD) and provide specific information about owners, partners, members, and corporate officers of the business, including names, social security numbers, and percentage of stock ownership.

Upon dissolution, termination, or abandonment of a corporation, certain officers, members, or owners may be held personally liable for unpaid contributions, interest, and penalties under specific conditions.

Corporations where all personal services are performed by corporate officers are excluded from the definition of employer and employing unit unless the corporation registers with ESD and elects to provide coverage for its officers.

Summary of Substitute Bill: Employers are no longer required to provide names, social security numbers, and percentage of stock ownership of owners, partners, members, and corporate officers when registering with ESD.

Services performed by a corporate officer are not considered services in employment, and the employer is not obligated to pay state unemployment taxes on wages earned by the officers. A corporation may elect to cover all of its corporate officers. If an employer chooses to not cover its corporate officers, the employer must notify the officers in writing that they are ineligible for benefits. If an employer fails to provide notice, the officers remain ineligible for benefits.

Language regarding the definition of employer and employing unit, as they pertain to corporations where all services are performed by corporate officers, is eliminated.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on December 29, 2013.

Staff Summary of Public Testimony on Original Bill: PRO: There is a lot of confusion when a business is incorporated regarding coverage of corporate officers. L&I is opt in for coverage; unemployment insurance (UI) is opt out. Businesses think they are in and they are not, businesses think they are out and then get a bill for back taxes. The confusion really effects smaller, family-owned businesses. The employer community needs to be educated about the new opt-in system to avoid further confusion. This would make the system consistent with L&I and avoid some confusion.

OTHER: There is a conformity issue and an implementation issue that can be addressed. In 2007, it was an opt-in system, that was changed in 2008 to an opt-out system. If this bill passes, it would change back to an opt-in system, and it might lead to some employer confusion. Many corporate officers today are covered by default – they have never opted out. This bill would automatically make them not covered, even if not informed they would be categorically ineligible UI. Some subset of those folks would think they are eligible for

UI but would find out when the corporation dissolves that they are not eligible. The bill impacts ESD's ability to pierce the corporate veil and get at individual assets when an employer has deliberately and willfully not paid contributions, penalties, and interest due. The bill would make ESD's ability to collect debts different than DOR and L&I.

Persons Testifying: PRO: Senator Schoesler, prime sponsor.

OTHER: Neil Gorrell, ESD.

House Amendment(s): The House amendment removes provisions in the bill that would have eliminated the UI benefit eligibility restriction for corporate officers who own 10 percent or more of the corporation, or a family member of such a person. Current law will be retained, which provides that corporate officers who own 10 percent or more of the corporation, or a family member of such a person, are not unemployed unless the corporation dissolves, the officer resigns, or the officer is removed from office.