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SENATE BILL 5402

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State of Washington

54th Legislature

1995 Regular Session

By Senators Pelz and Franklin; by request of Department of Labor & Industries

Read first time 01/23/95. Referred to Committee on Labor, Commerce & Trade.

1 AN ACT Relating to industrial insurance penalties; amending RCW  
2 51.16.200, 51.48.020, 51.48.120, and 51.48.150; adding a new section to  
3 chapter 43.22 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 51.16.200 and 1986 c 9 s 6 are each amended to read as  
6 follows:

7 Whenever any employer quits business, or sells out, exchanges, or  
8 otherwise disposes of the employer's business or stock of goods, any  
9 tax payable hereunder shall become immediately due and payable, and the  
10 employer shall, within ten days thereafter, make a return and pay the  
11 tax due; and any person who becomes a successor to such business shall  
12 become liable for the full amount of the tax and withhold from the  
13 purchase price a sum sufficient to pay any tax due from the employer  
14 until such time as the employer shall produce a receipt from the  
15 department showing payment in full of any tax due or a certificate that  
16 no tax is due and, if such tax is not paid by the employer within ten  
17 days from the date of such sale, exchange, or disposal, the successor  
18 shall become liable for the payment of the full amount of tax, and the  
19 payment thereof by such successor shall, to the extent thereof, be

1 deemed a payment upon the purchase price, and if such payment is  
2 greater in amount than the purchase price the amount of the difference  
3 shall become a debt due such successor from the employer.

4 No successor may be liable for any tax due from the person from  
5 whom (~~that person~~) the successor has acquired a business or stock of  
6 goods if (~~that person~~) the successor gives written notice to the  
7 department of such acquisition and no assessment is issued by the  
8 department within (~~sixty~~) one hundred eighty days of receipt of such  
9 notice against the former operator of the business and a copy thereof  
10 mailed to such successor.

11 **Sec. 2.** RCW 51.48.020 and 1987 c 221 s 1 are each amended to read  
12 as follows:

13 (1) Any employer, who (~~misrepresents to the department the amount~~  
14 ~~of his or her payroll upon which the premium~~) evades by any action,  
15 misrepresentation, or omission, a premium or fee imposed under this  
16 title (~~is based,~~) shall be liable to the state in ten times the  
17 amount of the difference in premiums paid and the amount the employer  
18 should have paid and for the reasonable expenses of auditing his or her  
19 books and collecting such sums. Such liability may be enforced in the  
20 name of the department. If such (~~misrepresentations are~~) action,  
21 misrepresentation, or omission is made knowingly, an employer shall  
22 also be guilty of a felony, or gross misdemeanor in accordance with the  
23 theft and anticipatory provisions of Title 9A RCW.

24 (2) Any person claiming benefits under this title, who knowingly  
25 gives false information required in any claim or application under this  
26 title shall be guilty of a felony, or gross misdemeanor in accordance  
27 with the theft and anticipatory provisions of Title 9A RCW.

28 **Sec. 3.** RCW 51.48.120 and 1986 c 9 s 10 are each amended to read  
29 as follows:

30 If any employer should default in any payment due to the state fund  
31 the director or the director's designee may issue a notice of  
32 assessment certifying the amount due, which notice shall be served upon  
33 the employer by mailing such notice to the employer by certified mail  
34 to the employer's last known address(~~, accompanied by an affidavit of~~  
35 ~~service by mailing,~~) or served in the manner prescribed for the  
36 service of a summons in a civil action. Such notice shall contain the  
37 information that an appeal must be filed with the board of industrial

1 insurance appeals and the director by mail or personally within thirty  
2 days of the date of service of the notice of assessment in order to  
3 appeal the assessment unless a written request for reconsideration is  
4 filed with the department of labor and industries.

5 **Sec. 4.** RCW 51.48.150 and 1987 c 442 s 1119 are each amended to  
6 read as follows:

7 The director or the director's designee is hereby authorized to  
8 issue to any person, firm, corporation, municipal corporation,  
9 political subdivision of the state, a public corporation, or any agency  
10 of the state, a notice and order to withhold and deliver property of  
11 any kind whatsoever when he or she has reason to believe that there is  
12 in the possession of such person, firm, corporation, municipal  
13 corporation, political subdivision of the state, public corporation, or  
14 any agency of the state, property which is or shall become due, owing,  
15 or belonging to any employer upon whom a notice of assessment has been  
16 served by the department for payments due to the state fund. The  
17 effect of a notice and order to withhold and deliver shall be  
18 continuous from the date such notice and order to withhold and deliver  
19 is first made until the liability out of which such notice and order to  
20 withhold and deliver arose is satisfied or becomes unenforceable  
21 because of lapse of time. The department shall release the notice and  
22 order to withhold and deliver when the liability out of which the  
23 notice and order to withhold and deliver arose is satisfied or becomes  
24 unenforceable by reason of lapse of time and shall notify the person  
25 against whom the notice and order to withhold and deliver was made that  
26 such notice and order to withhold and deliver has been released.

27 The notice and order to withhold and deliver shall be served by the  
28 sheriff of the county or by the sheriff's deputy, by certified mail,  
29 return receipt requested, or by any duly authorized representatives of  
30 the director. Any person, firm, corporation, municipal corporation,  
31 political subdivision of the state, public corporation or any agency of  
32 the state upon whom service has been made is hereby required to answer  
33 the notice within twenty days exclusive of the day of service, under  
34 oath and in writing, and shall make true answers to the matters  
35 inquired of in the notice and order to withhold and deliver. In the  
36 event there is in the possession of the party named and served with a  
37 notice and order to withhold and deliver, any property which may be  
38 subject to the claim of the department, such property shall be

1 delivered forthwith to the director or the director's duly authorized  
2 representative upon service of the notice to withhold and deliver which  
3 will be held in trust by the director for application on the employer's  
4 indebtedness to the department, or for return without interest, in  
5 accordance with a final determination of a petition for review, or in  
6 the alternative such party shall furnish a good and sufficient surety  
7 bond satisfactory to the director conditioned upon final determination  
8 of liability. Should any party served and named in the notice to  
9 withhold and deliver fail to make answer to such notice and order to  
10 withhold and deliver, within the time prescribed herein, it shall be  
11 lawful for the court, after the time to answer such order has expired,  
12 to render judgment by default against the party named in the notice to  
13 withhold and deliver for the full amount claimed by the director in the  
14 notice to withhold and deliver together with costs. In the event that  
15 a notice to withhold and deliver is served upon an employer and the  
16 property found to be subject thereto is wages, then the employer shall  
17 be entitled to assert in the answer to all exemptions provided for by  
18 chapter 6.27 RCW to which the wage earner may be entitled.

19 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.22 RCW  
20 to read as follows:

21 The department shall annually compile a comprehensive report on  
22 workers' compensation fraud in Washington. The report shall include  
23 the department's activities related to the prevention, detection, and  
24 prosecution of worker, employer, and provider fraud and the cost of  
25 such activities, as well as the actual and estimated cost savings of  
26 such activities. The report shall be submitted to the appropriate  
27 committees of the legislature prior to the start of the legislative  
28 session in January.

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