
Commerce & Labor Committee

HB 3059

Brief Description: Regarding liability for industrial insurance premiums.

Sponsors: Representatives Conway, Wood, McCoy, Kenney and Chase; by request of Department of Labor & Industries.

Brief Summary of Bill

- Increases successor liability for industrial insurance premiums owed by predecessor businesses.
- Adds a requirement to qualify for an exemption from contractor liability for industrial insurance premiums owed for work performed by subcontractors.
- Establishes corporate officer liability for certain industrial insurance premiums owed by corporations that have gone out of business.

Hearing Date: 2/3/04

Staff: Jill Reinmuth (786-7134).

Background:

Under the Industrial Insurance Act, persons other than the employer may be liable for payment of industrial insurance premiums owed on particular work. For example, business successors, public agencies, and private entities that let contracts for work may be liable for the payment of certain premiums.

Successor Liability

Persons who become successors to businesses also become liable for industrial insurance premiums owed to the Department of Labor and Industries (Department) but not paid within 10 days of the sale of such businesses. "Successor" is defined as a person to whom a business sells a major part of the business's "materials, supplies, merchandise, inventory, fixtures, or equipment."

Contractor Liability

Many private entities that let contracts for work are liable for payment of industrial insurance premiums owed on such work. Private entities are entitled to collect the full amount payable to the Accident Fund from the contractor, and the contractor is entitled to collect from a

subcontractor a proportionate amount of that. Consequently, the person letting the contract functions as a surety for the industrial insurance premiums.

The state Court of Appeals has described these provisions as "facilitat[ing] and broaden[ing] the premium collection powers of the Department." The Court of Appeals also said that the rationale for giving the Department these collection powers is that "the more the [Industrial Insurance Act] facilitates full collection of premiums, the better it serves the accident fund from which compensation is paid."

However, if certain requirements are satisfied, registered contractors and licensed electrical contractors are not liable for premiums owed on a subcontractor's work. These requirements are as follows:

- The subcontractor is a registered contractor or a licensed electrical contractor;
- The subcontractor has a principal place of business that is eligible for a business deduction for IRS purposes;
- The subcontractor maintains separate records reflecting business income and expenses; and
- The subcontractor contracted to perform certain types of work, such as construction, alteration, or demolition of a structure, or electrical work.

Corporate Officer Liability

Corporate officers and other individuals are not personally liable for premiums owed by corporations or limited liability companies.

Summary of Bill:

The provisions of the Industrial Insurance Act relating to successor and contractor liability are modified. A provisions relating to corporate officer liability is added.

Successor Liability

The definition of "successor" is modified. Instead of being restricted to a person to whom a business sells a major part of the business's "materials, supplies, merchandise, inventory, fixtures, or equipment," a successor is a person to whom a business sells the business's property, "whether real or personal, tangible or intangible."

Contractor Liability

The requirements that must be satisfied for registered contractors and licensed electrical contractors not to be liable for subcontractor premiums are modified. In addition to the requirements currently set forth in state law, a subcontractor that is an employer must have an industrial insurance account in good standing when the subcontract is let.

Corporate Officer Liability

When a corporate or limited liability company goes out of business, corporate officers and other persons are personally liable for premiums owed by the businesses, and any interest and penalties on the premiums, if:

- The officers or other persons willfully failed to pay the premiums; and

- The premiums became due while the officers or other persons were responsible for their payment.

"Willfully fails to pay or to cause to be paid" is defined as meaning a failure that was the result of "an intentional, conscious, and voluntary course of action."

Rules Authority: The bill does not contain provisions addressing the rule-making powers of an agency.

Appropriation: None.

Fiscal Note: Requested on January 28, 2004.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.