

HOUSE BILL REPORT

SB 5570

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to tax evasion.

Brief Description: Expanding tax evasion penalties.

Sponsors: Senators Newhouse, Schow, Horn, Heavey, Franklin, Fraser and Oke; by request of Joint Task Force on Nonpayment of Employer Obligations.

Brief History:

Committee Activity:

Commerce & Labor: 3/24/97, 4/3/97 [DPA].

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 9 members: Representatives McMorris, Chairman; Honeyford, Vice Chairman; Conway, Ranking Minority Member; Wood, Assistant Ranking Minority Member; Boldt; Clements; Cole; Hatfield and Lisk.

Staff: Chris Cordes (786-7103).

Background: 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.

Penalties for failing to insure. Employers who fail to secure industrial insurance coverage 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. If the employer engages in covered employment without a certificate of coverage from the Department of Labor and Industries, the employer is guilty of a gross misdemeanor; if work occurs after the certificate is revoked, the employer is guilty of a class C felony.

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 (gross misdemeanor to class B felony).

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

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.

Summary of Amended Bill: The penalties for employers who violate industrial insurance requirements are modified as follows.

Penalties for failing to insure. The misdemeanor penalty for willfully failing to secure industrial insurance coverage is repealed and new felony provisions are added. Under the new felony provisions, it is a class C felony if an employer knowingly, with intent to evade premium payments:

- (1) fails to secure industrial insurance coverage, or
- (2) fails to report payroll or employee hours.

Penalties for misrepresentation. The civil penalty for an employer who misrepresents the amount of payroll or hours is made a maximum penalty of 10 times the difference in premium paid and premium that should have been paid. The application of the penalty is limited to "knowing" 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 a new felony provision is added. Under the new felony provision, it is a class C felony if an employer knowingly, with intent to evade premium payments makes misrepresentations about payroll or employee hours.

Collection of penalties. On conviction under the new felony provisions, 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 investigative agencies, one-third to the prosecuting authority, and one-third to the general fund of the county whether the prosecution occurred.

Amended Bill Compared to Original Bill: The amendment: (1) makes employer misrepresentation of payroll or employee hours subject to a civil penalty if made "knowingly;" (2) repeals the current misdemeanor penalty for failure to secure coverage and adds a class C felony if an employer, with intent to evade premium payments, knowingly fails to secure coverage or knowingly fails to report payroll or employee hours; (3) revises the class C felonies for "misrepresentation;" (4) deletes the increased fine of \$25,000 (\$100,000 for corporations) for the new class C felonies; and (5) deletes the change in the statute of limitations that would have allowed specified felony prosecutions to be brought in five years instead of three.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: (Original bill) Although there is a need for better enforcement of employer obligations to cover their workers for workplace injuries, it is not clear that this bill will enhance enforcement. Criminal penalties are difficult to use because of the high level of proof needed to get a conviction. The "failure to file" penalty is a good idea. The bill is not clear about the relationship between existing penalties and the new penalties. If the felony for "accepting facts that turn out to be false" remains in the bill, it should be amended to ensure that the penalty applies only to "accepting false facts."

Testimony Against: None.

Testified: (In support) Suzanne Mager, Department of Labor and Industries. (In support, with concerns) Dick Ducharme, Building Industry Association of Washington; and Clif Finch, Association of Washington Business.