

HOUSE BILL REPORT

HB 2103

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to exclusions from industrial insurance coverage for beneficiaries of irrevocable trusts.

Brief Description: Excluding beneficiaries of irrevocable trusts from industrial insurance coverage.

Sponsors: Representatives Koster, McMorris, L. Thomas and Boldt.

Brief History:

Committee Activity:

Commerce & Labor: 3/3/97, 3/5/97 [DP].

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 5 members: Representatives McMorris, Chairman; Honeyford, Vice Chairman; Boldt; Clements and Lisk.

Minority Report: Do not pass. Signed by 4 members: Representatives Conway, Ranking Minority Member; Wood, Assistant Ranking Minority Member; Cole and Hatfield.

Staff: Chris Cordes (786-7103).

Background: Industrial insurance covers all persons, corporate or otherwise, whose trade or business engages in work covered by the industrial insurance law or contracts with workers for personal labor. All employment in Washington must be insured, except employment specifically exempted by statute. Among the exemptions are sole proprietors, partners, and certain corporate officers. The exemption statute does not mention business trusts.

A trust is an arrangement in which one party (the trustee) holds property interests (the trust estate) for the benefit of another party (the beneficiary). A trust may be revocable or irrevocable.

An example of a business trust is the Massachusetts trust regulated by Washington statute. These trusts are unincorporated business associations created to hold property

for the benefit and profit of persons who are holders of transferable certificates evidencing beneficial interests in the trust estate. These certificate holders are entitled to the same personal liability limitation as stockholders in private corporations.

To do business in Washington, a Massachusetts trust must file its trust instrument with the Secretary of State, listing its assumed business name and the names and addresses of its trustees. The trust is subject to Washington taxes, the law that applies to corporations with respect to issuance of securities, filing of required reports, service of process, the right to sue and be sued and deal in property, and other laws in a manner similar to the laws applicable to corporations.

Summary of Bill: Beneficiaries of irrevocable profit-sharing business trusts are added as employment exempt from mandatory industrial insurance coverage. To be exempt, the trust beneficiary must hold a transferable certificate evidencing a minimum of a 5 percent beneficial interest in the trust estate and must receive all of his or her compensation from the trust in the form of distributions of profits to beneficiaries.

A beneficiary is defined as the holder of a trust certificate which is valid until the death of the beneficiary unless (1) the certificate is voluntarily transferred; (2) the beneficiary fails, without notice, to contact the trust for at least 180 days; (3) the beneficiary initiates a frivolous law suit against the trust; or (4) the beneficiary engages in criminal behavior that harms the trust.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The profit-sharing business trust arrangements covered in this bill are a different kind of employment situation with significantly more security to the beneficiaries than the normal employment arrangement. The trusts are not widely used, in part because the beneficiaries are generally only family members or close friends and because the beneficial interest cannot be transferred by the trust. This type of business arrangement should have the same industrial insurance exemption as other business forms, such as partnerships and sole proprietorships. Beneficiaries in these trusts believed that they were exempt until told by staff at the Department of Labor and Industries that a specific exemption would be needed under current law.

Testimony Against: This bill does not exempt a class of employment from the industrial insurance laws like other exemptions in the statute. Although the bill limits the trust to 20 workers, nothing prohibits the company from forming multiple trusts to exempt all employment. Research indicates that more than 160 trusts now exist.

This exemption raises the potential for a problem similar to the problem created a few years ago when corporations made all their employees "corporate officers" to take advantage of the previous law's exemption of corporate officers.

Testified: (In support) Blain Nelson. (Opposed) Frank Romero, Department of Labor and Industries; and Robby Stern, Washington State Labor Council.