

HOUSE BILL REPORT

SHB 2071

As Passed Legislature

Title: An act relating to workers' compensation coverage for a member or manager of a limited liability company.

Brief Description: Excluding a member or manager of a limited liability company from workers' compensation coverage.

Sponsors: By House Committee on Commerce & Labor (Originally sponsored by Representatives B. Chandler, Conway, McMorris and Koster).

Brief History:

Committee Activity:

Commerce & Labor: 2/24/99, 2/25/99 [DPS].

Floor Activity:

Passed House: 3/9/99, 91-0.

Passed Senate: 4/6/99, 43-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Excludes members of limited liability companies from mandatory industrial insurance coverage under certain circumstances.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Clements, Republican Co-Chair; Conway, Democratic Co-Chair; B. Chandler, Republican Vice Chair; Wood, Democratic Vice Chair; Hurst; Lisk; McIntire and McMorris.

Staff: Chris Cordes (786-7103).

Background:

Industrial insurance applies to all employers, whether persons or corporate, whose trade or business engages in work covered by the industrial insurance law or who contract with workers for personal labor. All employment in Washington must be insured, unless specifically excluded by statute. Exclusions from mandatory coverage include sole proprietors, partners, and certain corporate officers. For public corporations, shareholder-directors with substantial management responsibility are exempt. For nonpublic corporations, up to eight shareholder-officers may be excluded who have substantial management responsibility, or any number of officers if the exempted officers are related by blood or marriage. Employers of persons excluded from mandatory coverage are permitted to elect coverage by filing notice with the Department of Labor and Industries.

In 1994, the Legislature authorized the limited liability company as an alternative form of organizing a business. The limited liability company combines the tax advantages of a partnership with the limited liability advantages of a corporation. The limited liability company is a noncorporate entity that allows the owners to participate actively in management while providing them with limited liability.

Management of the limited liability company is vested in the members unless the certificate of formation provides otherwise. The certificate of formation must vest management in one or more managers if the limited liability company is not to be managed by the members. Unless otherwise provided in the company agreement, managers are selected by the affirmative vote of members contributing, or required to contribute, more than 50 percent of the agreed value of the contributions made or to be made in the company.

Summary of Bill:

Members of a limited liability company are excluded from mandatory industrial insurance coverage if (1) the company's management is vested in the members and the members for whom the exemption is sought would qualify as exempt partners or sole proprietors if the business were a partnership or sole proprietorship; or (2) the company's management is vested in managers and the members for whom the exemption is sought are managers who would qualify as exempt corporate officers if the company were a corporation.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: (Original bill) Since the enactment of the limited liability company statute, the Department of Labor and Industries has interpreted the industrial insurance law as exempting members of these companies who act as managers. However, the Board of Industrial Insurance Appeals has recently decided that the exemptions do not apply. The purpose of the bill is to confirm the department's interpretation. The suggested amendments would clarify the bill and insure that the exemptions could not be expanded to cover employees who are not managers.

Testimony Against: None.

Testified: (In favor) Representative Bruce Chandler, prime sponsor; and Clif Finch, Association of Washington Business.

(In favor with amendment) Robby Stern, Washington State Labor Council.

(Neutral) Douglas Connell, Department of Labor and Industries.