
Commerce & Labor Committee

HB 3188

Brief Description: Concerning liability to the department of labor and industries for premiums, overpayments, and penalties.

Sponsors: Representatives Conway and Wood.

Brief Summary of Bill

- Defines it as fraud when industrial insurance benefits are obtained by willful false statement, willful misrepresentation or concealment of a material fact, or other willful deceptive scheme or device.
- 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.
- Authorizes the Department of Labor and Industries to use statutory collection procedures against health care providers who are overpaid.

Hearing Date:

Staff: Chris Cordes (786-7103); Jill Reinmuth (786-7134).

Background:

Benefit Payments Induced by Fraud

When an injured worker files a claim application with the Department of Labor and Industries (Department) or self-insurer, the worker provides certain information, including information about the injury or exposure, marital status, dependents, and employment. The application must be signed by the worker under a statement declaring the information to be true, to the worker's best knowledge and belief.

If the Department or a self-insured employer pays industrial insurance benefits that are induced by fraud, the recipient of the benefits must repay the amount with a penalty of 50 percent of the

benefits. The total amount may also be recouped from future benefits. Recovered penalties are paid into the supplemental pension fund.

The industrial insurance law does not define "fraud." Instead, to prove that the payment of industrial insurance benefits have been induced by fraud, the Department must prove common law civil fraud, which is found if all of the following are shown by clear, cogent, and convincing evidence:

- the person represented an existing fact;
- the fact was material;
- the fact was false;
- the person knew that the fact was false or was ignorant of its truth;
- the person intended the Department or self-insurer to act on the fact;
- the Department or self-insurer was ignorant of the falsity of the fact;
- the Department or self-insurer relied on the truth of the representation;
- the Department or self-insurer had a right to rely on the representation; and
- the Department or self-insurer was damaged as a consequence.

Employer Liability for Premiums

Under the Industrial Insurance Act, a person 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 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 Washington 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: Generally, corporate officers and other individuals are not personally liable for premiums owed by corporations or limited liability companies.

Collection of Provider Overpayments

The Department is authorized to conduct audits of health services providers, including medical, chiropractic, dental, vocational, and other providers of services to injured workers. In these audits, the Department may examine records relating to services rendered to an injured worker that were reimbursed by the Department.

If a provider unintentionally receives reimbursement to which he or she was not entitled, the provider is required to repay the excess amount, plus interest. If the provider knowingly receives an overpayment because of willful false statement, willful misrepresentation of a material fact, or another fraudulent scheme, the provider must repay the excess amount, plus interest, and civil penalties of up to \$1,000 or three times the amount of the overpayment, whichever is greater. The provider is also subject to a class C felony, with a fine of up to \$25,000, for certain "knowing" violations. Civil penalties are deposited in the State General Fund.

To collect overpaid benefits from workers or unpaid premiums from employers, the Department, or self-insured employer in the case of overpaid benefits, is permitted to obtain a warrant in superior court on a final Department order. The warrant is treated like a judgment and becomes a lien on the property of the person named. The warrant may be executed in the same manner as other court judgments. This statutory collection authority does not apply to providers who fail to repay overpayments or penalties.

Summary of Bill:

Benefit Payments Induced by Fraud

It is fraud if a person obtains industrial insurance payments or benefits that are more than the amount to which he or she is otherwise entitled by means of:

- willful false statements;
- willful misrepresentation or concealment of a material fact; or
- other willful deceptive scheme or device.

A "material fact" is one that would affect the Department or self-insurer's determination of entitlement to benefits, including facts about physical restrictions, ability to work, and activities which result or would reasonably be expected to result in wages or income. The Department is authorized to impute wages when wage information cannot be reasonably determined for activities that would reasonably be expected to result in wages or income.

The Department may adopt rules to implement these new fraud provisions. These new provisions apply to fraud determinations issued on or after July 1, 2004.

Employer Liability for Premiums

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 to be not liable for subcontractor premiums are modified. In addition to current statutory requirements, 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."

Collection of Provider Overpayments

The Department or self-insured employer is authorized to pursue the collection of unpaid overpayments, penalties, and interest from health care providers using the same procedures that are used to collect overpayments from workers.

Rules Authority: The bill allows the Department to adopt rules regarding obtaining benefits by fraud.

Appropriation: None.

Fiscal Note: Not requested.

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