

HOUSE BILL REPORT

HB 2055

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to the payment of industrial insurance premiums on construction work.

Brief Description: Requiring the payment of industrial insurance premiums for certain construction work.

Sponsors: Representatives Conway and Chase.

Brief History:

Committee Activity:

Commerce & Labor: 2/23/05, 3/2/05 [DP].

Brief Summary of Bill

- Makes construction work performed by any natural person included under mandatory industrial insurance coverage, and establishes the liability for premiums for that work.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 4 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins and McCoy.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Sump, Assistant Ranking Minority Member; and Crouse.

Staff: Chris Cordes (786-7103).

Background:

Industrial insurance is a no-fault state workers' compensation program that provides medical and partial wage replacement benefits to covered workers who are injured on the job or who develop an occupational disease. Employers must insure with the state fund operated by the Department of Labor and Industries (Department) or, if qualified, may self-insure.

Most employment in the state is mandatorily covered for industrial insurance. Sole proprietors, partners, certain corporate officers, and certain members of limited liability companies are not mandatorily covered for industrial insurance. These business owners or managers are, however, permitted to elect coverage.

A state fund employer pays premiums to the Department. A person, firm, or corporation that lets a contract for work is also liable for payment of the premiums owed on the work under the contract. The entity letting the contract is entitled to collect the premium from the contractor, and the contractor is entitled to collect from a subcontractor a proportionate share of the premiums. Consequently, the person letting the contract functions as a surety for the industrial insurance premiums.

If certain requirements are satisfied, registered contractors and licensed electrical contractors are not liable for premiums owed on a subcontractor's work. To satisfy these requirements, a subcontractor must:

- be a registered contractor or a licensed electrical contractor;
- have a principal place of business that is eligible for a business deduction for IRS purposes;
- maintain separate records reflecting business income and expenses;
- have contracted to perform certain construction work, such as construction, alteration, or demolition of a structure, or electrical work; and
- have an industrial insurance account in good standing with the Department.

In Washington, a contractor performing construction work must be a registered contractor unless the contractor is, among other exemptions:

- a representative of a governmental agency or a public utility meeting certain requirements;
- a property owner who contracts with a registered contractor or a property owner working on his or her own property as long as the improvement is not with the intention of selling the improved property;
- an owner of commercial property who uses its own employees to do maintenance, repair, and alteration work; and
- an entity that holds an electrical contractor license.

Likewise, most electrical work must be performed under a permit from the Department and under an electrical contractor license, using certified electricians or trainees. However, a license is not required for some electrical work, including:

- certain utilities, and work related to electrical transmission systems and street lighting;
- work on the electrical system of a motor vehicle or, as permitted by Department rule, on certain power generating equipment;
- incidental work performed by certified plumbers or trainees when replacing like-in-kind household appliances; and
- electrical work on a person's own residence, farm, or business property, unless the work is on the construction of a new building intended for sale or lease.

Summary of Bill:

Notwithstanding other provisions of the Industrial Insurance Act (Act), if construction work is performed by a natural person under contract, that employment is included within the mandatory coverage of the Act and the person is a "worker" while performing the work.

The industrial insurance premiums for this work are the responsibility of the registered contractor or licensed electrical contractor under whose registration or license the work was performed. If the work is performed without a registration or license, the premiums are the responsibility of the person contracting for the work. For the purposes of the Act, the person responsible for the premiums is the "employer" of the person performing the work.

"Construction work" means manual labor performed under circumstances that require either registration as a construction contractor or licensure as an electrical contractor, but does not include administrative or clerical work.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (In support) The underground economy is growing and is possibly a permanent part of our economy. Employers often misclassify workers as independent contractors. In Florida, insurers lost millions because of an exemption for independent contractors. Of the 55,000 registered contractors, over 28,000 are deemed independent contractors. But only 6,000 choose elective coverage. Misclassification of employees creates an uneven playing field and reduces tax collection. If an injured worker has been misclassified, the employer may have to add him or her to the payroll, but taxes for the coverage will not have been paid. The Department has not done anything about the subcontractors who are paying workers under the table. The six-part independent contractor test is too vague. Workers are not being covered on a regular basis. Sole proprietors do not realize that they are functioning as workers. Anyone who personally performs the work ought to be covered. Construction has one of the highest injury rates and claims costs of any industry. Public health studies issued by Harvard University indicate the challenges that uncompensated health care has for everyone. The industry cannot police itself effectively. As a result, it is difficult to compete when trying to follow the law.

(With concerns) The bill is too broad. Some parts of the construction industry, such as the electrical construction industry, do not have these concerns. The six-part test has resulted in a legal battle with the Department over a business model that contracts with other licensed and bonded contractors. These contractors earn from \$50,000 to \$125,000 a year. They take jobs on a daily basis and decide when to take, or not take, a job. Even after following the six-part test, a business can be liable if the independent contractor's license is suspended.

(Neutral) There are mixed feelings among the association's members. There needs to be a clear set of rules, so that everyone can do it right and abide by the law. The bill is too vague and subject to too many varying interpretations. It leaves too many questions unanswered, such as who is actually responsible for the premiums, and whether it overrides the six-part test. It is not clear why the bill is focused only on construction owners, and does not include other sole proprietors. The six-part test is impossible to follow because it requires the independent contractor to turn over information that the contracting party is not entitled to.

Testimony Against: The bill is unnecessary and is like taking a sledge hammer to the problem. Everyone shares concerns about the underground economy. But the law provides adequate punishment for those who are intentionally thwarting the law. Business owners who do not choose to be covered do not get workers' compensation benefits. It is difficult to tell from the bill if some work would be covered and other work not covered. Then the question would be when did the injury occur? This seems to expose homeowners to liability if a subcontractor down the line does not pay the industrial insurance premiums.

Persons Testifying: (In support) Dave O'Meara, International Union of Painters and Allied Trades; Phillip Lindquist; Janet Lewis, International Brotherhood of Electrical Workers, Local 46; Miriam Moses, Rebound; and Dick Mettler, Northwest Wall and Ceiling Contractors Association.

(With concerns) Larry Stevens, National Electrical Contractors Association; and Jeff Denckla.

(Neutral) Jeff Cummins and Debbie Tott, Washington State Floor Covering Association.

(Opposed) Rick Slunaker, Associated General Contractors.

Persons Signed In To Testify But Not Testifying: None.