

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 162

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO WORKER’S COMPENSATION; AMENDING SECTION 72-319, IDAHO
 2 CODE, TO PROVIDE PENALTIES FOR EMPLOYERS WHO INTENTIONALLY
 3 AND WILLFULLY FAIL TO SECURE THE PAYMENT OF COMPENSATION
 4 AND TO PROVIDE AN ADDITIONAL FACTOR THE COMMISSION MAY
 5 CONSIDER IN DETERMINING WHETHER PENALTIES SHOULD BE ASSESSED
 6 AND COLLECTED; AMENDING SECTION 72-506, IDAHO CODE, TO PROVIDE
 7 FOR AN APPEAL TO THE FULL INDUSTRIAL COMMISSION ON CERTAIN
 8 MATTERS; AMENDING SECTION 72-508, IDAHO CODE, TO PROVIDE FOR
 9 RULES OF PRACTICE AND PROCEDURE FOR MATTERS OF THE INDUSTRIAL
 10 COMMISSION AND TO MAKE TECHNICAL CORRECTIONS.
 11

12 Be It Enacted by the Legislature of the State of Idaho:

13 SECTION 1. That Section 72-319, Idaho Code, be, and the same is hereby amended to
 14 read as follows:

15 72-319. PENALTY FOR FAILURE TO SECURE COMPENSATION. (1) Any
 16 employer required to secure the payment of compensation under this law who fails to secure
 17 the payment thereof shall be guilty of a misdemeanor. In any case where the employer is
 18 a corporation or a limited liability company, any officer or employee of the corporation or
 19 manager or employee of a limited liability company who had authority to secure payment of
 20 compensation on behalf of the corporation or limited liability company and failed to do so shall
 21 individually be guilty of a misdemeanor.

22 (2) Such officer, employee or manager shall be personally liable jointly and severally
 23 with such corporation or limited liability company for any compensation which may accrue
 24 under this law in respect to any injury or occupational disease suffered by any employee of
 25 such corporation or limited liability company while it shall so fail to secure the payment of
 26 compensation.

27 (3) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner
 28 disposes of, conceals, secretes or destroys any property or records belonging to such employer,
 29 after one (1) of its employees has been afflicted by an injury or occupational disease, with
 30 intent to avoid the payment of compensation to such employee or his dependents, shall be
 31 guilty of a misdemeanor. In any case where such employer is a corporation or limited liability
 32 company, any officer, employee or manager thereof, if knowingly participating or acquiescing
 33 in any such act, shall also be individually guilty of a misdemeanor.

34 (4) Any employer required to secure the payment of compensation under this law, who
 35 intentionally and willfully fails to do so, may be liable for a penalty of either two dollars
 36 (\$2.00) for each employee for each day or twenty-five dollars (\$25.00) for each day during
 37 which such failure continues, whichever is greater, and in cases where the employer is a
 38 corporation or limited liability company and is unable to pay the fine, any officer or employee

1 of the corporation or manager of a limited liability company who had authority to secure
 2 payment of compensation on behalf of the corporation or a limited liability company and
 3 failed to do so, shall be liable for a like penalty, to be recovered for the time during which
 4 such failure continued, but for not more than three (3) consecutive years, in an action brought
 5 by the commission in the name of the state of Idaho; any amount so collected shall be paid
 6 into the industrial administration fund; for this purpose the district court of any county in
 7 which the employer carries on any part of its trade or occupation shall have jurisdiction. In
 8 determining whether penalties should be assessed or collected for the employer's failure to
 9 secure the payment of compensation, the commission may consider the following factors:

- 10 (a) When the employer was notified that such employer's worker's compensation
 11 insurance coverage had been cancelled or that such insurance was required;
 12 (b) The length of time that elapsed between when the employer was notified that
 13 worker's compensation insurance coverage was required or that such employer's coverage
 14 had been cancelled, and the date that such coverage was put into effect;
 15 (c) Whether the employer is able to document attempts to secure worker's compensation
 16 insurance coverage during the period of time that such employer was without such
 17 coverage;
 18 (d) Whether there were prior instances in which the employer failed to keep worker's
 19 compensation insurance in effect or such coverage was cancelled, and the reasons for
 20 such failure or cancellation;
 21 (e) The reasons that the employer is unable to obtain or keep in effect worker's
 22 compensation insurance coverage;
 23 (f) Whether the employer had knowledge or reason to know of the requirement to carry
 24 worker's compensation insurance coverage.

25 The above factors are not exclusive and the commission may consider any other relevant factor.

26 (5) If any employer required to secure the payment of compensation under this law is
 27 or has been in default under section 72-301, Idaho Code, the employer may be enjoined by
 28 the district court of any county in which such employer carries on any part of its trade or
 29 occupation from carrying on such business while any default under section 72-301, Idaho Code,
 30 exists. All proceedings in the courts under this section are to be brought by the industrial
 31 commission in the name of the state of Idaho.

32 (6) An employer who fails to secure the payment of compensation and who has been
 33 assessed a penalty within the previous three (3) years pursuant to section 72-319(4), Idaho
 34 Code, shall be liable for the following penalty in addition to the penalty provided by section
 35 72-319(4), Idaho Code:

- 36 (a) Five hundred dollars (\$500) for the second failure to secure the payment of
 37 compensation;
 38 (b) One thousand dollars (\$1,000) for the third and any subsequent failure to secure the
 39 payment of compensation.

40 SECTION 2. That Section 72-506, Idaho Code, be, and the same is hereby amended to
 41 read as follows:

42 72-506. ACTS OF COMMISSION OR REFERENCE – HEARING OFFICERS. (1)
 43 Any investigation, inquiry or hearing which the commission has power to undertake or hold
 44 may be undertaken or held by or before any member thereof or any hearing officer, referee or
 45 examiner appointed by the commission for that purpose.

1 (2) Every finding, order, decision or award made by any member, hearing officer, referee,
2 or examiner pursuant to such investigation, inquiry or hearing, ~~when~~ shall be subject to appeal
3 and a hearing before the full commission pursuant to the rules of practice and procedure the
4 commission has adopted. If the finding, order, decision or award made by any member, hearing
5 officer, referee, or examiner pursuant to such investigation, inquiry or hearing is approved and
6 confirmed by the commission, and ordered filed in its office, it shall be deemed to be the
7 finding, order, decision or award of the commission.

8 SECTION 3. That Section 72-508, Idaho Code, be, and the same is hereby amended to
9 read as follows:

10 72-508. AUTHORITY TO ADOPT RULES ~~AND REGULATIONS~~. Pursuant to
11 the provisions of chapter 52, title 67, Idaho Code, the commission shall have authority to
12 promulgate and adopt reasonable rules ~~and regulations~~ for effecting the purposes of this
13 act. The commission shall promulgate rules of practice and procedure for matters of the
14 commission. The commission may use the rules of practice and procedure of the attorney
15 general. Notwithstanding the provisions of chapter 52, title 67, Idaho Code, the commission
16 shall have authority to promulgate and adopt reasonable rules ~~and regulations~~ involving judicial
17 matters. In administrative matters and all other matters, the commission shall be bound by
18 the provisions of chapter 52, title 67, Idaho Code. Rules ~~and regulations~~ as promulgated and
19 adopted, if not inconsistent with law, shall be binding in the administration of this law.