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Bill would make skirting workers' comp a felony

By LYNN ARDITI AND KATHERINE GREGG June 11, 2003 Publication: Providence Journal (RI) Page: A-01 Word Count: 1100

More than 400 Rhode Island businesses that previously had no workers' compensation insurance have signed up for coverage with Beacon Mutual Insurance, according to a company official.

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Legislation crafted in the wake of The Station fire would allow the state to level felony charges and fines of up to \$1,000 a day against businesses without workers' compensation insurance, even first offenders.

The legislation was considered by a House committee yesterday and may come to a vote on the Senate floor as early as today. It is aimed at toughening criminal sanctions against workers' compensation scofflaws.

Since the Feb. 20 fire, more than 400 businesses that previously had no workers' compensation insurance have signed up for coverage with Beacon Mutual Insurance, according to Beacon's vice president of legal services, Michael D. Lynch.

The rush to insure comes as investigators for the state Workers' Compensation Fraud Prevention Unit comb the coverage records of 1,725 bars, nightclubs, restaurants and other businesses licensed to serve liquor. An initial review completed last month found no record of coverage for 504.

Enforcement against businesses has intensified following revelations that The Station's owners, Jeffrey and Michael Derderian, had no workers' compensation coverage for the nearly three years that they owned the West Warwick nightclub.

The fire killed 100 people and injured more than twice as many. A waitress, two bouncers and a ticket taker who were working at The Station on the night of the fire were among those killed.

Without coverage, The Station employees and their families are not eligible for workers' compensation benefits.

By law, any business with one or more employees must carry workers' compensation coverage.

The state Department of Labor and Training has ordered the Derderians to pay a \$1.06-million penalty for failure to purchase the coverage. The department also has referred the case to the state attorney general for criminal prosecution.

The Derderians have appealed the ruling. A hearing in the state Workers' Compensation Court is scheduled June 20.

Many proposed changes in the law are focused on upping the ante for businesses charged with criminal violations an area of enforcement that has been almost nonexistent.

State Workers' Compensation Court Judge George Healy said yesterday that he cannot recall a single case in which criminal charges have been brought against an employer for failure to carry workers' compensation insurance.

Under existing law, employers who "knowingly" fail to purchase coverage can only be charged with a felony if it is their second offense in 10 years. Otherwise, the most severe charge is a misdemeanor.

If approved, the new law would allow felony charges against first-time offenders. The legislation also would distinguish between "unintentional" violators and "knowing" violators.

The first category would include those who went without insurance because of a "clerical error where the uninsured period is less than one year . . . and there were no employees injured." In such cases, violators could face an administrative penalty of at least one year's insurance premium and at most, triple that.

In the case of "knowing" violators, a House committee yesterday considered a criminal penalty of up to \$10,000, civil penalties of \$500 to \$1,000 per day and up to two years in prison.

Under the legislation, the labor department would only handle cases of "unintentional noncompliance or noncompliance resulting from clerical error," where the employer lacked coverage for less than one year and no employees were injured.

All other cases would either go directly to the Workers' Compensation Court or, in the most serious cases, to the attorney general for criminal prosecution.

The House Labor committee wrestled for 11³² hours yesterday with a version of the bill that AFL-CIO secretary-treasurer George Nee described as the recommendation of a 17-member workers' compensation advisory panel that includes members of business and labor.

Nee told the legislators the bill tells employers what they should already know "unless they have been living under a rock" since The Station fire: that "you have an obligation as an employer in Rhode Island" to provide workers' compensation insurance, and "you can't play the odds [of detection] anymore."

With no quorum yesterday, there was no committee vote.

But Nee and Beacon's Lynch agreed to rework several sections of the bill and to ask the Senate to hold off on today's scheduled vote on a matching bill in response to concerns raised by Rep. Arthur Corvese, the House Labor chairman, and others.

Corvese, D-North Providence, questioned the need to make prosecutors prove that an employer "knowingly" failed to get workers' compensation coverage. "I think the 'knowing' can be taken out," Corvese said. But he was dissuaded from removing the word entirely by Mark P.

McKenney, a lobbyist for the National Federation of Independent Business and the municipal insurance pool known as the Rhode Island Interlocal Risk Management Trust.

If there is no need to prove an employer "knowingly" ignored the law, McKenney said the law could snag an employer whose coverage expired because of a neglectful bookkeeper. "A clerical error . . . and suddenly, you are a felon," he said.

The committee members decided to leave intact the notion that an employer had to "knowingly fail to secure or maintain" coverage to be guilty of a felony.

In an interview, Stephen Dennis, a lawyer who represents workers in claims against employers, was critical of what he termed "wiggle room for employers" in the legislation. Dennis said the term "knowingly violated" is a loophole big enough that "you could drive a Mack truck through it."

Nee hailed a provision that allows the Department of Labor and Training to shut down an employer without workers' compensation insurance.

For some club owners, Nee said, the words - "you're not opening for the night" could pose an even bigger penalty than a \$1,000-a-day fine.

"I'm surprised this wasn't addressed in the past," Corvese said.

Nee said current law already allows a state labor director to shut down a business without the insurance, but none have ever done so "because they tell us, it [the law] was not clear enough."

The proposed legislation deals with other workers' compensation issues. But Nee said the main point was to "send a strong signal," in the wake of The Station fire, to employers who "played the odds" they would never get caught.

Though The Station fire was mentioned repeatedly as impetus for the legislation, Lynch called it unlikely the proposed new law making a felony out of what is now a misdemeanor would have any effect on the Derderians.

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MAKING A POINT: Rep. Arthur Corvese, D-North Providence, yesterday leads the House Labor Committee's discussion of a bill that would make it a felony for an employer not to carry workers' compensation insurance. He is joined by the committee's legal counsel, Raymond Cooney, left, and Patrick Ross of the House majority leader's office.

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Providence Journal (RI)

Date: June 11, 2003

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