

← Back

Workers' comp scofflaws may face tougher penalty

By LYNN ARDITI June 20, 2003 Publication: Providence Journal (RI) Page: A-01

Word Count: 929

Employers who fail to carry the mandatory insurance could face felony charges.

* * *

The Senate yesterday approved legislation drafted in response to The Station nightclub fire that would make employers who fail to carry workers' compensation insurance subject to felony charges punishable by fines of up to \$10,000 and two years in prison.

The legislation, strengthened since last week's debate in a House committee, is intended to toughen criminal sanctions against workers' compensation scofflaws by, among other things, removing ignorance of the law as a defense.

It sailed through the Senate on a vote of 34 to 0 with no debate, and an identical bill was then promptly approved by the House Labor Committee. A vote on the House floor is expected sometime next week.

The legislation follows revelations that The Station's owners, Jeffrey and Michael Derderian, had no coverage when their nightclub burned to the ground on Feb. 20.

The fire killed 100 people and injured more than 200. A waitress, two bouncers and a ticket-taker who were working at The Station on the night of the fire were among those killed.

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

Unlike other types of insurance, workers' compensation covers businesses in the event that an employee gets hurt on the job or dies as a result of such an injury. The coverage generally pays a portion of an employees' lost wages, plus medical care.

In the case of a death, the insurance provides \$15,000 for burial expenses, plus a portion of lost wages to the deceased's spouse or dependent children until they reach age 18, or, if they are in college, until age 23.

But with no coverage, The Station employees received none of those benefits.

The Derderians are facing a \$1.06-million penalty leveled by the state Department of Labor and Training for failure to have coverage for the nearly three years that they owned the West Warwick nightclub. The department also has referred the case to the state attorney general's office for criminal prosecution.

The Derderians are scheduled to appear today in state Workers' Compensation Court on their appeal of the civil penalty.

Under existing law, besides civil penalties of up to \$1,000 per day, employers who fail to purchase coverage can be charged with a felony - but only if it's their second offense in 10 years, and if they "knowingly" violated the law.

The legislation debated for 11³² hours in a House committee last week would have allowed felony charges against first-time offenders, but it made a distinction between "unintentional" violators and "knowing" violators. To be charged with a felony, the original version of the legislation said, the employer had to have violated the law "knowingly."

Rep. Arthur Corvese, the House Labor chairman, and others last week questioned the need to prove that an employer "knowingly" failed to purchase workers' compensation insurance to be charged with a felony, and suggested that the provision be removed.

One critic of that language, lawyer Stephen Dennis, who represents workers in claims against employers, said in an interview that "knowingly violated" was a loophole so big that "you could drive a Mack truck through it."

Yesterday, that language in the legislation was gone. Instead, it read simply: Any employer "that is found to have violated this section or section 28-36-15, is guilty of a felony for failing to secure and maintain compensation . . . "

"I think it was just a question of making sure there were not any unnecessary impediments to prosecuting a felony," George Nee, secretary-treasurer of the AFL-CIO, said in an interview after the Senate approved the measure. Nee is chairman of the 17-member Workers' Compensation Advisory Council, made up of members of business and labor, which helped craft the legislation.

"I hope this will provide a wake-up call to every employer in the state," Nee added.

The legislation still distinguishes between violators subject to felony charges and "unintentional" violators in cases where the "unintentional noncompliance" is a result of "clerical error where the uninsured period is less than one year from the date of discovery 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.

Other violators would face civil penalties of \$500 to \$1,000 per day, as well as criminal charges punishable by fines of up to \$10,000 and up to two years in prison.

Under the new legislation, the Labor Department would only handle cases of "unintentional noncompliance or noncompliance resulting from clerical error" where the employer was without coverage for less than one year and no employees were injured.

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

Only the state attorney general can prosecute criminal charges for workers' compensation violations. And to date, that level of enforcement has been almost nonexistent.

And while the legislation was born out the The Station tragedy, it would have no impact on the Derderians' case, the AFL-CIO's Nee said during an interview.

Nor will it help Justin DeMaio, the 8-year-old son of Dina DeMaio, who died while working as a waitress at The Station on the night of the fire.

But Nee said that perhaps the legislation might prevent other employers from operating the way the Derderians did at The Station.

"You would hope that if a law like this had been in effect," Nee said, "that this type of employer would have taken it more seriously and they'd have comp. . . . And [Justin DeMaio] would have been eligible for weekly benefits until he was 18."

Lynn Arditi, a staff writer, can be reached at larditi@projo.com.

Providence Journal (RI)

Date: June 20, 2003

Page: A-01

Copyright © 2003. LMG Rhode Island Holdings, Inc. All Rights Reserved.