

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 80

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1
2 RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING CHAPTER 13, TITLE 72,
3 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-1312A, IDAHO CODE, TO DE-
4 FINE WHEN CORPORATE OFFICERS ARE UNEMPLOYED; AMENDING CHAPTER 13, TITLE
5 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-1352A, IDAHO CODE, TO
6 ALLOW CORPORATIONS TO EXEMPT CORPORATE OFFICERS FROM UNEMPLOYMENT IN-
7 SURANCE COVERAGE; AND AMENDING SECTION 72-1361, IDAHO CODE, TO PROVIDE
8 A CORRECT STATUTORY CITATION.

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

10 SECTION 1. That Chapter 13, Title 72, Idaho Code, be, and the same is
11 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
12 ignated as Section 72-1312A, Idaho Code, and to read as follows:

13 72-1312A. CORPORATE OFFICER -- EMPLOYMENT. (1) A corporate officer
14 meeting the requirements of section 72-1312, Idaho Code, whose claim for
15 benefits is based on any wages with a corporation in which the corporate of-
16 ficer or a family member of the corporate officer has an ownership interest
17 shall be:

18 (a) Not "unemployed" and ineligible for benefits in any week during the
19 corporate officer's term of office with the corporation, even if wages
20 are not being paid.

21 (b) "Unemployed" in any week the corporate officer is not employed by
22 the corporation for a period of indefinite duration because of circum-
23 stances beyond the control of the corporate officer or a family member
24 of the corporate officer with an ownership interest in the corporation,
25 and the period of "unemployment" extends at least through the corporate
26 officer's benefit year end date. If at any time during the benefit year
27 the corporate officer resumes or returns to work for the corporation,
28 it shall be a rebuttable presumption that the corporate officer's unem-
29 ployment was due to circumstances within the corporate officer's con-
30 trol or the control of a family member with an ownership interest in the
31 corporation, and all benefits paid to the corporate officer during the
32 benefit year shall be considered an overpayment for which the corporate
33 officer shall be liable for repayment.

34 (2) For purposes of this section, "family member" is a person related
35 by blood or marriage as parent, stepparent, grandparent, spouse, brother,
36 sister, child, stepchild, adopted child or grandchild.

37 SECTION 2. That Chapter 13, Title 72, Idaho Code, be, and the same is
38 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
39 ignated as Section 72-1352A, Idaho Code, and to read as follows:

1 72-1352A. CORPORATE OFFICERS -- EXEMPTION FROM COVERAGE -- NOTIFICA-
2 TION -- REINSTATEMENT. (1) A corporation that is a public company, other
3 than those covered in sections 72-1316A, 72-1322D and 72-1349C, Idaho Code,
4 may elect to exempt from coverage pursuant to this chapter any bona fide cor-
5 porate officer who is voluntarily elected or voluntarily appointed in accor-
6 dance with the articles of incorporation or bylaws of the corporation, is a
7 shareholder of the corporation, exercises substantial control in the daily
8 management of the corporation and whose primary responsibilities do not in-
9 clude the performance of manual labor.

10 (2) A corporation that is not a public company, other than those cov-
11 ered in sections 72-1316A, 72-1322D and 72-1349C, Idaho Code, may elect to
12 exempt from coverage pursuant to this chapter any bona fide corporate offi-
13 cer, without regard to the corporate officer's performance of manual labor,
14 if the corporate officer is a shareholder of the corporation, voluntarily
15 agrees to be exempted from coverage and exercises substantial control in the
16 daily management of the corporation.

17 (3) For purposes of this section, a "public company" is a corporation
18 that has a class of shares registered with the federal securities and ex-
19 change commission pursuant to section 12 or 15 of the Securities and Exchange
20 Act of 1934 or section 8 of the Investment Company Act of 1940, or any succes-
21 sor statute.

22 (4) To make the election, a corporation with qualifying corporate offi-
23 cers pursuant to subsection (1) or (2) of this section must register with the
24 department each qualifying corporate officer it elects to exempt from cover-
25 age. The registration must be in a format prescribed by the department and
26 be signed and dated by the corporate officer being exempted from coverage.
27 Registration forms received and approved by the department on or before De-
28 cember 15 shall become effective the first day of the next calendar year and
29 shall remain in effect for two (2) consecutive calendar years. Exemptions
30 from coverage shall not be retroactive and the corporation requesting the
31 exemption shall not be eligible for a refund or credit for contributions paid
32 for corporate officers before the effective date of the exemption.

33 (5) A corporation may elect to reinstate coverage for one (1) or more
34 corporate officers previously exempted pursuant to this section. Rein-
35 statement requires written notice from the corporation to the department
36 in a format prescribed by the department. Reinstatement requests received
37 by the department on or before December 15 shall become effective the first
38 day of the calendar year following the end of the exemption's two (2) year
39 effective date. Coverage shall not be reinstated retroactively.

40 SECTION 3. That Section 72-1361, Idaho Code, be, and the same is hereby
41 amended to read as follows:

42 72-1361. APPEALS TO THE DEPARTMENT AND TO THE COMMISSION. Upon ap-
43 peal from a denial of a claim for refund or credit, determination of amounts
44 due upon failure to report, determination of rate of contribution, de-
45 termination of coverage, determination of chargeability, or jeopardy
46 determination, the director may transfer the appeal directly to an appeals
47 examiner pursuant to section 72-1368(6), Idaho Code, or he may issue a rede-
48 termination affirming, reversing or modifying the initial determination. A
49 redetermination shall become final unless, within fourteen (14) days after

1 notice as provided in section 72-1368(5), Idaho Code, an appeal is filed by
2 an interested party with the department in accordance with the department's
3 rules. Appeal procedures shall be governed by the provisions of section
4 72-1368(4), (6), (7), (8), (9) and (11), Idaho Code. The party appealing
5 shall have the burden of proving each issue appealed by clear and convincing
6 evidence. The provisions of the Idaho administrative procedure act, chapter
7 52, title 67, Idaho Code, regarding contested cases and judicial review of
8 contested cases are inapplicable to proceedings involving interested em-
9 ployers under this chapter.