

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 847 (Reyes)
Version: February 21, 2025
Hearing Date: April 29, 2025
Fiscal: Yes
Urgency: No
AM

SUBJECT

Workers' compensation: uninsured employer: transfer of real property

DIGEST

This bill authorizes the Director (Director) of the Department of Industrial Relations (DIR) to determine whether a transfer of real property by an uninsured employer or a substantial shareholder made after the date of an employee's injury, but before the Director has recorded a certificate of lien, was intended to retain a beneficial interest in the real property in the transferor, such that a trust for the benefit of the uninsured employer or substantial shareholder was created. The bill, upon a determination by the Director that a transfer resulted in such a trust, authorizes the Director to record a certificate of lien against the resulting trust in the property in favor of the Director in the same manner as if the transfer had not occurred, as provided. The bill authorizes the Director to make a prima facie showing that the transfer resulted in such a trust being created if certain conditions exist. The bill provides an appeal procedure to contest the determination of the Director. The bill specifies it does not affect the interests, priorities, and ownership rights of bona fide encumbrancers and purchasers.

EXECUTIVE SUMMARY

Under existing law, all employers are required to obtain workers' compensation insurance, either through an insurance company or by being self-insured in a state program. If an employee of an uninsured employer is injured and the illegally uninsured employer fails to pay the workers' compensation benefits awarded to the injured employee, that employee can have their claim paid from the Uninsured Employers Benefits Trust Fund (fund). The Director has the right to recover benefits paid from the fund, including by recording a certificate of lien against the uninsured employers' real property. This bill authorizes the Director to record a certificate of lien against property transferred by an illegally uninsured employer or substantial shareholder if the transfer was made with the intention for the transferor to retain a beneficial interest in the real property. This will hopefully deter illegally uninsured employers from making transfers of real property to avoid having a lien attach for the

unpaid workers' compensation benefits, and also provide the Director with a means to recoup payments if such a scenario occurs.

The bill is sponsored by the California Applicant Attorneys' Association and supported by various business associations and organizations, including the California Chamber of Commerce. No timely opposition was filed with the Committee. The bill passed the Senate Labor, Public Employment and Retirement Committee on a vote of 5 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes a comprehensive system of workers' compensation insurance that provides a range of benefits for an employee who suffers from an injury or illness that arises out of and in the course of employment, regardless of fault. This system requires all employers to insure payment of benefits by either securing the consent of the Department of Industrial Relations (DIR) to self-insure or by obtaining insurance from a company authorized by the state. (Lab. Code §§ 3200-6002.)
- 2) Provides that if the employer has failed to pay workers' compensation, the Director is to determine, based on the available evidence, whether the employer was prima facie illegally uninsured.
 - a) A finding that the employer was prima facie illegally uninsured must be made when the Director determines that there is sufficient evidence to constitute a prima facie case that the employer employed an employee on the date of the alleged injury and failed to secure the payment of compensation, and that the employee was injured arising out of, and occurring in the course of, the employment.
 - b) The following constitutes, in itself, sufficient evidence for a prima facie case that the employer failed to secure the payment of compensation:
 - i. the employer failed to provide a written statement within 10 days from receiving a request for a statement;
 - ii. there is a written denial by the insurer named in the statement furnished by the employer;
 - iii. the nonexistence of a valid certificate of consent to self-insure for the time of the claimed injury, if the statement furnished by the employer claims the employer was self-insured; or
 - iv. there is no existing record of the employer's insurance with the Workers' Compensation Insurance Rating Bureau.
 - c) The un rebutted written declaration under penalty of perjury by the injured employee, or applicant other than the employee, that the employee was employed by the employer at the time of the injury, and that the employee was injured in the course of their employment constitutes, in itself, sufficient evidence for a prima facie case that the employer employed the employee at

- the time of the injury, and that the employee was injured arising out of, and occurring in the course of, the employment. (Lab. Code § 3715(c).)
- 3) Requires the Director, when they determine that an employer was prima facie illegally uninsured, to mail a written notice of the determination to the employer at the address as shown on the official address record of the appeals board, and to any other more recent address the Director may possess. The notice must advise the employer of its right to appeal the finding, and that a lien may be placed against the employer's and any parent corporation's property, or the property of substantial shareholders of a corporate employer. (Lab. Code § 3715(d).)
 - 4) Requires the Director, when an employer fails to pay a person entitled to worker's compensation, to pay that person or their dependents from the Uninsured Employers Benefits Trust Fund (UEBTF). (Lab. Code § 3716.)
 - 5) Provides that in the event the Workers Compensation Appeals Board (Appeals Board) finds that a corporation is the employer of an injured employee, and that the corporation has failed to pay workers' compensation, the following persons are jointly and severally liable with the corporation: 1) all persons who are a parent, as defined in Section 175 of the Corporations Code, of the corporation, and 2) all persons who are substantial shareholders of the corporation or its parent. (Lab. Code § 3717(a).)
 - a) A "substantial shareholder" is defined as a shareholder who owns at least 15 percent of the total value of all classes of stock, or, if no stock has been issued, who owns at least 15 percent of the beneficial interests in the corporation. (*Id.* at subd. (b).)
 - b) Provides that in determining the ownership of stock or beneficial interest in the corporation, in the determination of whether a person is a substantial shareholder of the corporation, the rules of attribution of ownership of Section 17384 of the Revenue and Taxation Code are to be applied. (*Id.* at subd. (c).)
 - 6) Authorizes the Director to file a certificate of lien and the name and address of the employer against whom it was filed, as specified, in the office of the county recorder in the counties where the employer's property is possibly located when the Appeals Board or the Director determines that an employer has failed to pay workers' compensation, or when the Director has determined that an employer is prima facie illegally uninsured. (Lab. Code § 3720.)
 - a) Provides that in any claim in which the alleged uninsured employer is a corporation, for purposes of filing certificates of lien, the Director may determine, according to the evidence available, whether a person is prima facie a parent or substantial shareholder, as defined.

- b) Any person aggrieved by a finding of the Director that they were prima facie a parent or substantial shareholder may request a hearing on the finding by filing a written request for a hearing with the Director, as provided.
- c) A party aggrieved by the findings of the hearing officer may, within 20 days, apply for a writ of mandate to the superior court, as specified. (Lab. Code § 3720.1.)

This bill:

- 1) Provides that if an uninsured employer or a substantial shareholder has recorded a vesting deed conveying an ownership interest in real property after the date of the employee's injury and before the Director has recorded a certificate of lien pursuant to 6), above, the Director may determine whether the transferor of such real property intended to retain a beneficial interest in the real property, such that a resulting trust for the benefit of the uninsured employer or substantial shareholder was created.
 - a) If the property has subsequently been transferred to a bona fide purchaser, the Director cannot make the determination above.
- 2) The Director may make a prima facie finding that the transaction created a resulting trust for the benefit of the uninsured employer or substantial shareholder if the director determines that there is sufficient evidence to show either the following circumstances described in a) or b), below, are present.
 - a) The recorded vesting deed indicates thereon that the transfer was made as a gift or that no transfer tax to the county was paid.
 - b) The transferor made the transfer with actual intent to hinder, delay, or defraud collection of reimbursement for funds paid by the Uninsured Employers Benefits Trust Fund to or on behalf of an injured worker. A finding made pursuant to this paragraph may be made when at least three or more of the following circumstances are present:
 - i. the transfer was to a personal or business associate or a relative by blood, affinity, or marriage of the transferor;
 - ii. the transferor maintains the real property as a place of residence or business after the transfer;
 - iii. the transferring parties did not employ an escrow or title company to close the transaction transferring the real property;
 - iv. the value of the consideration received by the transferor was not reasonably equivalent to the value of the real property transferred;
 - v. the transferor failed to attend scheduled hearings and trials of the appeals board after the transfer; or
 - vi. the transferor owns legal title to no other real property in the county.
- 3) Provides that if the Director determines that a transfer of real property by the uninsured employer or a substantial shareholder created a resulting trust for the

benefit of such transferor, a certificate of lien recorded by the Director pursuant to 6), described in the existing law above, will attach to that resulting trust in the property and constitutes a valid lien against the property in favor of the Director in the same manner as if the transfer had not occurred.

- a) The director must mail written notices of the prima facie determination of said resulting trust to the transferor and transferee at their addresses as shown on the recorded vesting deed, the official address record of the Appeals Board, and to any other more recent addresses the Director may have.
 - b) The notice must advise the transferring parties of their right to appeal the finding, and that a lien may record and attach against the subject real property stating therein that, "THE DIRECTOR HAS MADE A PRIMA FACIE DETERMINATION PURSUANT TO LABOR CODE SECTION 3720.2 THAT THE TRANSFEE, [FIRST AND LAST NAME], HOLDS TITLE TO THE REAL PROPERTY AT [STREET ADDRESS, CITY AND PARCEL NUMBERS] ON BEHALF OF THE TRANSFEROR, [FIRST AND LAST NAME], IN A RESULTING TRUST" in bold and uppercase letters on the certificate of lien.
- 4) Authorizes a person aggrieved by a prima facie finding of the Director under 3), above, to request a hearing in writing.
 - 5) Requires the Director to hold a hearing, through a hearing officer appointed by the Director, within 20 days of the receipt of the request for hearing and must mail a notice of the time and place of the hearing to the person who requested it at least 10 days prior to the hearing.
 - a) The hearing officer must hear and receive evidence, and within 10 days of the hearing, file findings on whether there is sufficient evidence to constitute a prima facie case that the transfer of real property is subject to a resulting trust.
 - b) The hearing officer must serve with the findings a summary of evidence received and relied upon and the reasons for the findings. A party may at their own expense require that the hearing proceedings be recorded and transcribed.
 - c) A party aggrieved by the findings of the hearing officer may, within 20 days, apply for a writ of mandate to the superior court. The venue will lie in the county in which the real property is located.
 - 6) Specifies that these provisions do not affect the interests, priorities, and ownership rights of bona fide encumbrancers and purchasers.

COMMENTS

1. The stated need for the bill

The author writes:

SB 847 ensures that an employer who illegally does not carry unemployment insurance, does not use loop holes to avoid punishment. By allowing the Department of Industrial Relations to administratively identify when property is being illegally shielded, SB 847 guarantees justice is served and protects the financial stability of the [Uninsured Employers Benefit Trust Fund] UEBTF while also providing long term, timely relief for injured workers.

2. Uninsured Employers Benefits Trust Fund

The Senate Labor, Public Employment and Retirement Committee analysis provides useful background on the Uninsured Employers Benefits Trust Fund (UEBTF), noting it is a special fund “used to pay the claims of employees who are injured or become ill while working for an illegally uninsured employer, including medical treatment. The UEBTF is not the employer’s insurance carrier or self-insured employer’s third party administrator. The Director has the right to recover all benefits paid from the fund to cover the injured worker’s claim, including by recording a certificate of lien against the uninsured employers’ real property. Once the lien is attached to the real property, the Director can collect the amount the UEBTF is owed when the employer sells or refinances their property.”¹

The existing lien process has proven to be a successful mechanism for the UEBTF to recoup what it pays out. However, the author and sponsor note that some of the worst offending uninsured employers are transferring their residential and rental properties for little to no compensation to relatives and friends before the Director is able to record the lien. This bill seeks to discourage and prevent transfers of property by illegally uninsured employers in order to avoid paying what they owe. The sponsor of the bill argues these “types of real property transfers undermine the ability of the Director to secure reimbursement of funds paid out by the UEBTF, which in turn causes continuing and lasting harm to the UEBTF and leads to higher costs for law abiding employers who obtain insurance and California taxpayers who absorb these costs.”

Under existing law, the Director can make a prima facie showing on two issues related to the UEBTF: (1) whether the employer was illegally operating without workers’ compensation insurance; and (2) if an individual who holds a 15 percent interest in the employer entity qualifies as a “substantial shareholder” of the entity. (Lab. Code §

¹ Sen. Lab., Pub. Empl. and Retirement Comm. analysis of SB 847 (2025-26 reg. sess.) as introduced Feb. 21, 2025 at p. 4.

3715.) This bill would allow the Director to make a prima facie showing that a trust for the benefit of the uninsured employer or substantial shareholder was created by a transfer of real property if sufficient evidence shows the transfer was made as a gift or that no transfer tax to the county was paid. Additionally, a prima facie showing can be made if the transfer was made with actual intent to hinder, delay, or defraud collection of reimbursement for funds paid by the UEBTF if at least three of certain circumstances exist, including:

- the value received by the transferor was not reasonably equivalent to the value of the real property transferred;
- the transferor maintains the real property as a place of residence or business after the transfer; and
- the transfer was to a personal or business associate or a relative by blood, affinity, or marriage.

The bill contains notice requirements and provides for a hearing upon a written request for appeal. A person may apply for a writ of mandate in superior court after the hearing by the Director or their designee. The bill also specifies that it does not affect the interests, priorities, and ownership rights of bona fide encumbrancers and purchasers of the real property at issue. This will ensure that a bona fide purchaser or creditor is not affected by a lien placed on the property by the Director, as they were not party to any fraud.

3. Statements in support

The California Applicant Attorneys' Association, the sponsor of the bill, writes:

The most effective method of collection employed by the Director against uninsured employers is through recording a certificate of lien. Once the lien has been attached to the real property located in the county where the certificate was recorded, the lien has the same effect as a judgment lien. Typically, the Director collects the amounts the UEBTF has expended when the employer closes a sale or refinances the property. While this has proven to be a successful method by which the UEBTF recoups those amounts it has expended, some of the worst offending employers have transferred their residential and rental properties for little to no compensation (or consideration) to relatives and friends (or insiders) before the UEBTF was able to record its lien. SB 847 is intended to discourage and prevent such wrongful actions.

In recent years, there has been an increase in the transfer of real properties after a worker is injured and a workers' compensation case is filed. These transfers often reflect an intent by the illegally uninsured employer to avoid a certificate of lien's attachment to their real property, and a corresponding intent to evade the UEBTF's lawful demands and efforts to collect reimbursement for funds paid out to the injured worker.

SB 847 would stop this “fraud-on-fraud” scheme by adding a section to the Labor Code authorizing the Director of the Department of Industrial Relations to attach a lien to property that has been fraudulently transferred by an illegally uninsured employer.

SUPPORT

California Applicant Attorneys’ Association (sponsor)
American Property Casualty Insurance Association
California Association of Winegrape Growers
California Chamber of Commerce
California Coalition on Workers Compensation
California Farm Bureau

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 3758 (Conroy, Ch. 1226, Stats. 1992) provided that in any case in which the findings and order, decision, or award of the Appeals Board is against an employer that has failed to secure the payment of compensation, the State of California on behalf of the Uninsured Employers Fund is entitled to have judgment entered, not only against the employer, but also against any person found to be parents or substantial shareholders of the employer.

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 5, Noes 0)
