

A Survey of Federal and State Actions to Counter Misclassification Fraud

Presented to:

Washington Joint Legislative Taskforce on
the Underground Economy in the Construction Industry
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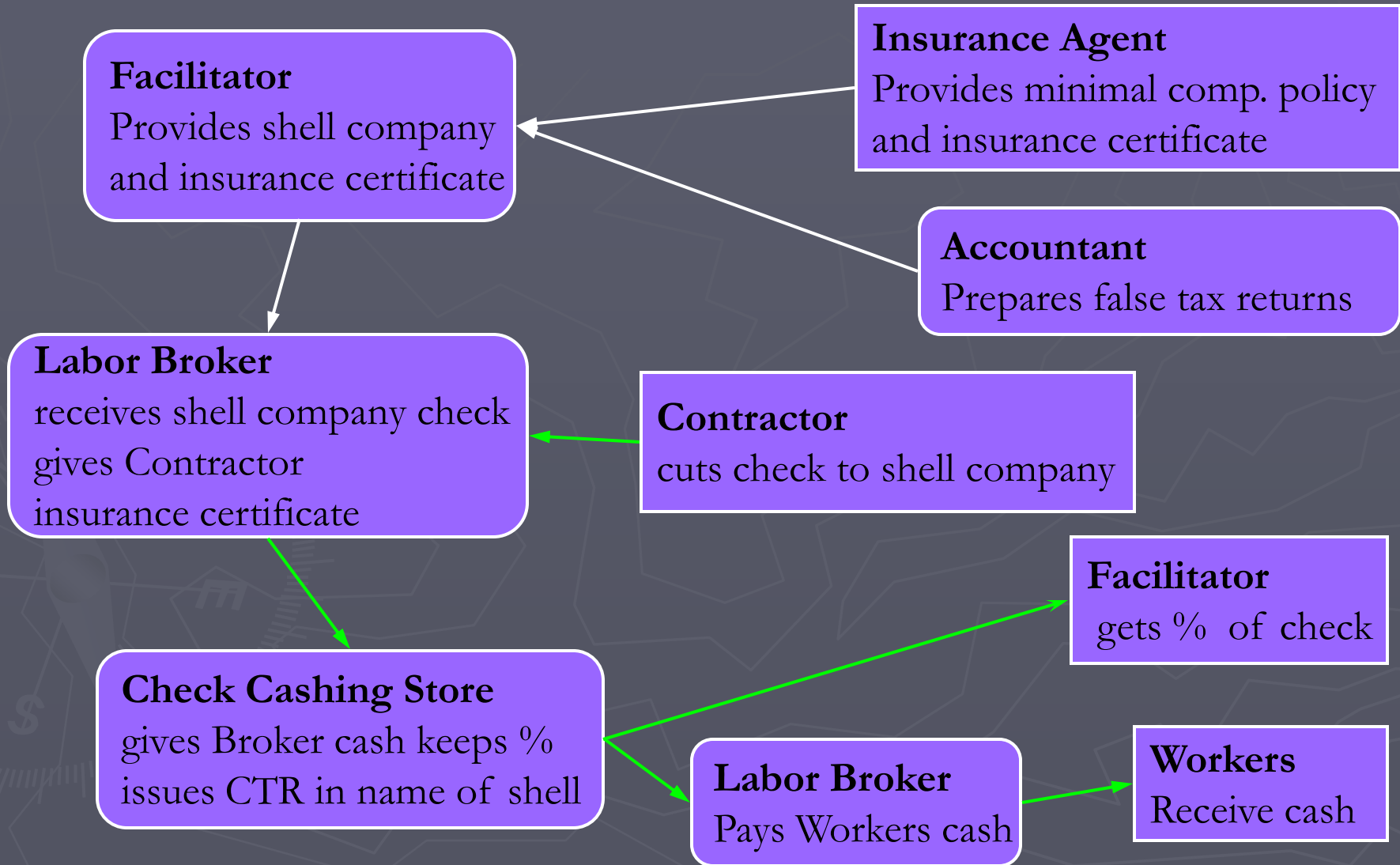
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Fraud in the Construction Industry

- 1) Worker who is an employee is paid as an independent contractor and receives an IRS 1099 misc. form at the close of the tax year.
- 2) A worker is paid by check or cash, and the payment is not reported.

Fraud as a Business Plan



State Laws Violated

- ▶ State Wage and Hour Laws
- ▶ State Tax Code
- ▶ State Workers' Compensation Laws
- ▶ State Unemployment Tax Laws
- ▶ State Anti-Racketeering Laws
- ▶ Other State Laws: grand theft, money laundering, unreported cash transactions, insurance fraud

What needs to be done

- ▶ **Increase the capabilities of law enforcement agencies** through better funding, sharing of information and enforcement taskforces-including more cooperation with federal authorities and other states where appropriate.
- ▶ **Strengthen laws by creating more enforcement tools**, like stop work orders and private causes of action. Make the failure to properly classify an individual as an employee unlawful.
- ▶ **If definitions of "employment" are changed, create uniform definitions with presumptions of employee status.** Any new definition should not weaken "employment." Also, some states have taken steps to reduce the incentive to misclassify by treating employees and independent contractors similarly.
- ▶ **More concern needs to be shown for employers who play by the rules.** Reward them by adopting policies that will discourage irresponsible contractors from bidding public work.
- ▶ **Encourage better self policing by the industry** through enforcement actions using joint employment, conspiracy and racketeering charges. Require disclosure on workers compensation certificates of classification codes and the wages premiums are based upon.
- ▶ **Track cases** to determine the effectiveness of statutes and enforcement strategies.

Federal Response

► Three federal bills

- **S 2044 Independent Contractor Proper Classification Act:** Limits safe harbors, Treasury and Labor to work together as appropriate.
- **HR 5804 Taxpayer Responsibility, Accountability and Consistency Act:** Limits safe harbors, requires reporting of corp. to corp. transactions, Treasury to issue reports and share information with Labor, penalties increased.
- **HR 6111 Protecting Workers from Misclassification Act:** Violation to fail to properly classify, state UIs to report on anti-misclassification plans, Labor to share info. with IRS where appropriate.

Federal Response

► Enforcement

- Increased recognition: Part of \$345 billion tax gap.
- IRS Questionable Employment Tax Practices Program
- USDOL Enforcement Priority

States Respond

- ▶ Certification required to be an independent contractor

Minnesota, Montana for workers compensation

- ▶ Conspirators, other than direct employer, specifically punished

Florida

- ▶ Databases to be used to identify violators

Utah, California

States Respond

- ▶ Failure to classify as an employee punished
Illinois, Massachusetts, New Jersey
- ▶ Misclassification as an independent contractor punished
Connecticut, Florida, Kansas, Missouri, New Mexico
- ▶ Penalty revenue to enforcement
Colorado, Connecticut, Florida, Illinois, New Hampshire, New Jersey
- ▶ Presumptions of employment
Illinois, Minnesota, Montana for workers compensation if no independent contractor certification, New Jersey, Massachusetts

States Respond

- ▶ Private cause of action allowed for effects of misclassification or non-reporting

For employers see: Connecticut, Florida. For employees: Illinois, Minnesota, New Jersey

- ▶ Responsible bidder/contractor laws for permitting/registration and public construction

See: New England states, Ohio

- ▶ Stop work orders

Connecticut, Florida, Massachusetts, New Jersey, New York

States Respond

▶ Taskforces

California, Connecticut, Iowa (study only), New Hampshire (study only), New Jersey, New York, Massachusetts, Michigan, Utah, Vermont, West Virginia and Washington (study only)

▶ Tax withholding from independent contractors in the construction industry

Minnesota, New Jersey

▶ “Universal” definitions of employment

New Hampshire, New Jersey, Minnesota, Washington

States Respond

- ▶ Workers compensation coverage required, with some exceptions, for independent contractors

Colorado, Delaware, Florida, Montana, New Hampshire, Tennessee

- ▶ Workers' compensation premium fraud

Newer state laws: New Hampshire, South Carolina, Vermont

Increased Activity & Interest

- ▶ Not only legislation, more enforcement on state level
- ▶ Bi-partisan involvement
- ▶ Contractor involvement

UBC Resources

- ▶ Misclassification Fraud Website:
www.carpenters.org/misclassification
 - Misclassification Fraud Education Video
 - Media Reports
 - Key Studies and Reports
 - Enforcement Resources