

HOUSE BILL REPORT

ESSB 5837

*As Reported By House Committee on:
Commerce & Labor*

Title: An act relating to employment.

Brief Description: Revising provisions for industrial insurance and employment compensation coverage.

Sponsor(s): Senate Committee on Commerce & Labor (originally sponsored by Senators Anderson, Owen, Snyder and Matson).

Brief History:

Reported by House Committee on:
Commerce & Labor, April 5, 1991, DPA.

**HOUSE COMMITTEE ON
COMMERCE & LABOR**

Majority Report: *Do pass as amended.* Signed by 8 members: Representatives Heavey, Chair; Cole, Vice Chair; Franklin; Jones; R. King; O'Brien; Prentice; and Wilson.

Minority Report: *Do not pass.* Signed by 2 members: Representatives Fuhrman, Ranking Minority Member; and Lisk, Assistant Ranking Minority Member.

Staff: Chris Cordes (786-7117).

Background: The state industrial insurance act does not define "employment." However, an employer is any person or business who engages in any work covered by industrial insurance or who contracts with one or more workers when the essence of the contract is the personal labor of the worker. Workers include all persons engaged in employment or working under an independent contract, if the essence of the contract is personal labor for the employer.

Some employments are excluded from mandatory industrial insurance coverage, including sole proprietors and partners other than registered contractors and licensed electricians who have not elected to withdraw from mandatory coverage, and corporate officers who are shareholders of the corporation.

Under the unemployment insurance law, personal services are employment if performed by one or more contractors or

subcontractors unless: (1) the individual performing the services is free from control or direction over the performance; (2) the service is either outside the usual course of business for which the service is performed or the service is performed outside all of the places of business of the enterprise; and (3) the individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service.

Summary of Amended Bill: The following changes are made in industrial insurance and unemployment insurance definitions relating to covered employments and employees.

Industrial insurance

Definition of employment. "Employment" for industrial insurance purposes is defined as personal service of any nature, unlimited by the common law relationship of master and servant and including service in interstate commerce, for wages or under contract for the performance of personal services. Personal services are employment if performed by one or more contractors or subcontractors unless: (1) the individual performing the services is free from control or direction over the performance; (2) the service is either outside the usual course of business for which the service is performed, the service is performed outside all of the places of business of the enterprise, or the individual is responsible for the costs of the place of business from which the service is performed; (3) the individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service or has a principal place of business eligible for a business tax deduction; (4) the individual is filing a schedule of expenses with the federal Internal Revenue Service for his or her business; (5) the individual has an account with the Department of Revenue and other agencies as required by law and has a state unified business identifier number; and (6) the individual maintains a separate set of accounting records for the business.

Definition of employer. The definition of employer is changed: (1) to delete the reference to contracts with workers when the essence of the contract is personal labor and (2) to include agreements to remunerate the service performed under the new definition of "employment."

The exemption from the definition of "employer" for a registered contractor who is contracting with a business that is also registered is amended to add that the business

must be registered at the time the contract is signed and during all periods of performance.

Definition of worker. The definition of worker is changed (1) to delete the reference to work under an independent contract when the essence of the contract is personal labor and (2) to include all individuals who for remuneration perform services defined under the new definition of "employment."

Exclusions from coverage. Registered contractors and licensed electricians who are sole proprietors and partners are excluded from mandatory coverage, but may elect coverage. The requirement that these sole proprietors and partners must elect to withdraw from mandatory coverage is repealed.

The exclusion for corporate officers is amended to permit an exclusion if: (1) the officer is a bona fide executive officer, whose tenure is subject only to action of the directors; (2) the officer holds at least 10 percent of the voting stock; and (3) the officer exercises substantial supervisory control in the daily management of the corporation, with major responsibilities that do not include manual labor, and with annual compensation substantially higher than the annual compensation of the corporation's highest paid worker.

Other exclusions from mandatory industrial insurance coverage include newspaper carriers, occasional employees of professional sports teams, and insurance agents, brokers, and solicitors.

Any employee whose employment is excluded from mandatory coverage may be covered at the election of his or her employer.

State industrial insurance does not apply to employees who are covered under the federal Employees' Compensation Act.

Unemployment insurance

Covered employment. The requirements for finding personal services to be excluded from employment are amended to add the following criteria: (1) as an alternative to the requirement that the service is outside the usual course of business or performed outside of all the places of business, the individual may show that he or she is responsible for the costs of the place of business from which the business is performed; (2) as an alternative to being customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved

in the contract of service, the individual may show that he or she has a principal place of business eligible for a business tax deduction; (3) the individual must be filing a schedule of expenses with the federal Internal Revenue Service for his or her business; (4) the individual must have an account with the Department of Revenue and other agencies as required by law and have a state unified business identifier number; and (5) the individual must maintain a separate set of accounting records for the business.

Covered employment does not include services performed by occasional employees of professional sports teams. The exclusion for services performed by insurance agents and solicitors is amended to include an exclusion for insurance brokers.

Amended Bill Compared to Substitute Bill: The amendment makes the following changes to the substitute bill: (1) for determining independent contractor status under both industrial insurance and unemployment insurance, as an alternative to the requirement that the service is outside the usual course of business or performed outside of all the places of business, the individual may show that he or she is responsible for the costs of the place of business from which the business is performed; (2) the exclusion for corporate officers is amended to permit an exclusion if (a) the officer is a bona fide executive officer, whose tenure is subject only to action of the directors; (b) the officer holds at least 10 percent of the voting stock; and (c) the officer exercises substantial supervisory control in the daily management of the corporation, with major responsibilities that do not include manual labor, and with annual compensation substantially higher than the annual compensation of the corporation's highest paid worker; (3) provisions are deleted that would have exempted workers 62 years of age or older from industrial insurance and unemployment insurance when services are performed on a casual basis; (4) provisions are added to exclude from mandatory industrial insurance coverage newspaper carriers, occasional employees of professional sports teams, and insurance agents, brokers, and solicitors; (5) a provision is added to exclude from covered employment services performed by occasional employees of professional sports teams; and (6) the exclusion from unemployment insurance for services performed by insurance agents and solicitors is amended to include an exclusion for insurance brokers.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: There has been a need for many years to clarify when a person is an employee and when he or she is an independent contractor under industrial insurance laws. If the person is holding him or herself out as a business, then he or she should be responsible for state insurance taxes. This bill provides clear guidelines that the Department of Labor and Industries and the Employment Security Department can administer, and that employers and employees can understand.

Testimony Against: Some of the exemptions in the bill are going beyond current policy for covered employments and, for unemployment insurance law, may be out of conformity with federal requirements. The bill needs to address corporate officer exclusions as well as independent contractor exclusions.

Witnesses: (in favor) Senator Ann Anderson, prime sponsor; Walt Corneille, IDS Financial Services and International Association for Financial Planning; Clark Sites, Independent Insurance Agents of Washington; Becky Bogard, Ackerly Communications; Rowland Thompson and Mary Drobka, Allied Daily Newspapers; Clif Finch, Association of Washington Business; Gary Smith, Independent Business Association; Doug Bohlke, Evergreen State Taxi Association; Bill Pickell, Washington Contract Logger Association; and Jerry Farley, Cascade Nursing Services. (in favor, with concerns) Lance Palmer, Washington State Trial Lawyers Association; Bob Dilger, Washington State Building and Construction Trades Council; Graeme Sackrison, Employment Security Department; and Doug Connell, Department of Labor and Industries.