

**SENATE BILL REPORT**

**ESSB 5837**

**AS PASSED SENATE, MARCH 19, 1991**

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

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

**SENATE COMMITTEE ON COMMERCE & LABOR**

**Majority Report:** That Substitute Senate Bill No. 5837 be substituted therefor, and the substitute bill do pass.

Signed by Senators Matson, Chairman; Anderson, Vice Chairman; McDonald, McMullen, Moore, and Murray.

**Staff:** Dave Cheal (786-7576)

**Hearing Dates:** March 4, 1991; March 6, 1991

**HOUSE COMMITTEE ON COMMERCE & LABOR**

**BACKGROUND:**

Under both industrial insurance and unemployment compensation laws, virtually every employee is covered but independent contractors are not. Many contracting and employment situations make it difficult to determine whether there is an employer/employee relationship or whether the service is being provided by an independent contractor.

Sole proprietors and partners are generally not covered by industrial insurance, except that building contractors and licensed electricians who registered or became licensed after July 26, 1981 are covered unless they take positive steps to withdraw from coverage.

A few federal employees are currently eligible for benefits under both the federal and state industrial insurance systems.

**SUMMARY:**

A definition of "employment" is added to the industrial insurance law. It includes virtually all services performed by an individual for remuneration unless a six-part test is met indicating that such service is not employment. The test includes: (a) the individual performing is free from outside control or direction; (b) the service performed is outside the usual course of business for the entity the service is performed for; (c) the individual is customarily engaged in the trade or business of the nature involved in the particular contract, or the individual has a place of business that is eligible for a business deduction for federal income tax

purposes, or the person maintains a set of books that reflect income and expenses of the business being conducted; (d) the individual files a schedule of income and expenses with the Internal Revenue Service; and (e) the individual has established an account with state agencies for the business being conducted for the payment of taxes normally paid by such businesses.

The definition of "employer" is modified to include all persons or corporations who agree to remunerate the services performed under the new definition of "employment."

Under current law there are various situations where a registered contractor or licensed electrician is not an employer, such as when they are contracting with other contractors or licensed electricians. This exclusion is clarified by indicating that it applies if the parties are registered or licensed at the time the contract is signed.

The definition of "worker" is modified to include performance of services, as provided in the new definition of "employment" in section 1. The term "work" is changed to "services" throughout the definition of "worker."

The provision that sole proprietors or partners who became registered contractors or licensed electricians after July 26, 1981 are covered unless they take steps to remove themselves from coverage is removed.

The current double coverage for certain federal employees under federal and state industrial insurance programs is removed. They are covered only under the federal program.

The definition of employment for unemployment compensation purposes is amended to duplicate the definition of employment for industrial insurance purposes.

The list of excluded employment for both industrial insurance and unemployment compensation is expanded to include small scale off-premises work done by retired persons.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** requested March 1, 1991

**TESTIMONY FOR:**

It provides a clear workable definition of who is an independent contractor and not an employee for the purposes of unemployment compensation and industrial insurance. For the first time, the two programs will be using the same definition.

**TESTIMONY AGAINST:** None

**TESTIFIED:** Bill Pickell, loggers (pro); Frank Elliott, Specialty Advertising (pro); Doug Bohlke, ESTA/TAXIS (pro); Walt Corneille, IDS; Doug Connell, Department of Labor and Industries (pro); Robert Dilger, Washington State Building Trades Council (pro); Gerald Farley, Cascade Nursing Services (pro); Graeme Sackrison, Department of Employment Security (pro); Clif Finch, AWB (pro); Gary Smith, IBA (pro)

**HOUSE AMENDMENT(S):**

The definition of corporate officer is significantly clarified. "Corporate officers" are an employment which is excluded from industrial insurance coverage. To be excluded an officer must be voluntarily appointed or elected, must also be a director and shareholder, must exercise substantial management control, and primary duties do not include manual labor. A nonpublic corporation, as defined by the Business Corporations Act, may name eight or fewer corporate officers who are exempt from coverage under a less stringent test, or may exempt any number if they meet the more stringent test of public corporations, or are close relatives.

The list of employments exempt from industrial insurance coverage is expanded to include newspaper carriers and insurance agents, brokers or solicitors as defined by Title 48 RCW. Insurance brokers are also exempt from unemployment compensation.

The six part test for determining independent contractor status for industrial insurance and unemployment compensation purposes have been refined but are essentially the same as SSB 5837. The unemployment compensation test is made as an alternative to the existing three part test.

The double coverage correction of federal employers is removed because it passed as part of another bill.

The Senate floor amendment relating to retired persons as independent contractors has been removed.

An effective date of January 1, 1992, is provided.