

HOUSE BILL REPORT

HB 1292

As Passed House
March 8, 1993

Title: An act relating to defining "employment" for unemployment compensation.

Brief Description: Defining "employment" for unemployment compensation.

Sponsors: Representatives Anderson, G. Cole, Chandler, Heavey, Veloria, Wood, Franklin, Springer, King and J. Kohl.

Brief History:

Reported by House Committee on:
Commerce & Labor, February 17, 1993, DP;
Passed House, March 8, 1993, 97-0.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 9 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Lisk, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Conway; Horn; King; Springer; and Veloria.

Staff: Jim Kelley (786-7166).

Background: Under the unemployment compensation law, all employees are covered, except for those specifically excluded, such as barbers and cosmetologists. Independent contractors and corporate officers are not covered. "Employment" means personal services performed for wages or under any contract calling for the performance of personal services. There are two alternative tests for determining whether the services of an independent contractor constitute employment.

Personal services are employment if performed by an individual for remuneration, 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.

As an alternative, personal services do not constitute employment if: (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) on the effective date of the contract, the individual is responsible for filing a schedule of expenses with the federal Internal Revenue Service for his or her business; (5) on the effective date of the contract or within a reasonable period, 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) on the effective date of the contract, the individual is maintaining a separate set of accounting records for the business.

The exclusion for barbers and cosmetologists provides that employment does not include services performed in a barber or cosmetology shop by "booth renters." Under the barber and cosmetology licensing law, "booth renter" is defined as a person who performs cosmetology, barbering, esthetics, or manicuring services where the use of the salon/shop facilities is contingent upon compensation to the owner and the person receives no compensation or other consideration from the owner for the services performed.

Summary of Bill: For purposes of unemployment compensation law, employment does not include services performed by a licensed massage practitioner in a massage business, if the use of the business facilities is contingent upon compensation to the owner and the person receives no compensation from the owner for the services performed.

Fiscal Note: Requested February 5, 1993.

Effective Date: The bill contains an emergency clause and takes effect July 1, 1993.

Testimony For: The problem with the current law is that if you rent space from and work under the same roof as another massage therapist, you are treated as an employee, even if you are actually an independent business person. Some massage therapists are considered employees for unemployment purposes, despite being licensed as self-employed persons, paying separate taxes, and advertising separately.

Testimony Against: None.

Witnesses: Ray Shindler, Alicia Reilly, and Ted Hulbert,
American Massage Therapists Association (pro).