

SENATE BILL REPORT

SB 6289

As Reported by Senate Committee On:
Commerce & Labor, January 27, 2016

Title: An act relating to employing certain independent contractors through the use of a digital platform.

Brief Description: Addressing the use of a digital platform to employ certain independent contractors.

Sponsors: Senators Baumgartner and Hobbs.

Brief History:

Committee Activity: Commerce & Labor: 1/25/16, 1/27/16 [DPS, DNP].

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: That Substitute Senate Bill No. 6289 be substituted therefor, and the substitute bill do pass.

Signed by Senators Baumgartner, Chair; Braun, Vice Chair; King and Warnick.

Minority Report: Do not pass.

Signed by Senators Hasegawa, Ranking Minority Member; Conway and Keiser.

Staff: Susan Jones (786-7404)

Background: The state's industrial insurance laws, commonly referred to as the workers' compensation act, provides medical and other benefits to workers who suffer a work-related injury or develop an occupational disease. Employers must insure through the State Fund administered by the Department of Labor and Industries (L&I) or, if qualified, may self-insure.

The Legislature has found that:

- there is a hazard in all employment;
- it is the purpose of the workers' compensation act to embrace all employments which are within the legislative jurisdiction of the state; and
- the workers' compensation act is to be liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Certain employments are excluded from the mandatory coverage of the workers' compensation system. Two of the excluded employments are:

- any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed 40 or more hours a week in such employment; and
- any person employed to do gardening, maintenance, or repair at a private home of the employer.

Summary of Bill (Recommended Substitute): An entity administering a digital platform or application is not considered an employer of: (1) individuals performing services as domestic servants employed in employers' private homes where there are less than two employees regularly employed for 40 or more hours a week; and (2) gardeners and maintenance or repair workers at employers' private homes.

"Digital platform" means a digital network or software application to connect service providers to requestors for the purpose of providing services that (1) provides lists of specified jobs available with employers other than itself, (2) is consistent with the law which prohibits an employer or worker from providing an exemption from industrial insurance in a contract and clarifies the roles of service providers and requestors, and (3) charges a fee to the employer or worker for its services.

EFFECT OF CHANGES MADE BY COMMERCE & LABOR COMMITTEE (Recommended Substitute): Clarifies that a person administering a digital platform is not an employer for those performing services as a domestic servant in certain circumstances - or a gardener or a maintenance or repair worker in a private home - and revises the definition of "digital platform" to provide that the platform and its purpose is consistent with the law that no employer or worker may exempt the worker from the burden or waive the benefits of the Industrial Insurance Act by any contract and that the platform and its purpose clarifies the roles of the service provider and requestor.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: PRO: There are online websites that connect homeowners with professionals to do home projects. These websites or digital platforms save the homeowner a lot of time. Handy.com provides this digital platform. Handy.com had \$2 million in revenue with 11,000 consumers making over 40,000 transactions with approximately 300 professionals, earning on average of \$19 per hour. The platform provides the professionals with the ability to choose which jobs to take, how much to work, and when to work. A professional may choose to accept or reject a job. The professionals like the platform for the flexibility and independence. The platform works because of the independent contractor relationship between the platform and the professional.

Under current law, if a homeowner makes a telephone call to hire a professional to do home projects, there is an exemption from independent contractor status. However, it is unclear if the exemption applies if the homeowner hires the person through a digital platform. If the professional is injured, the worker takes the risk of the injury. The bill would provide clarity that whether the homeowner calls or goes online to hire the professional, they are an independent contractor.

CON: The problem with the bill is that independent contractor status necessarily hinges on the how a worker finds the job. It's not on the relationship between the worker and the client or the employer. There is nothing in the law now about how a worker finds a job, whether it is through a digital platform, a job application, a hiring hall, or friends and family. There is no difference between picking up the phone and using an app and that is why it should not be written in the law. Electrical workers are opposed to the bill as electrical work is one of the most dangerous jobs in the country. The apps cover small electrical jobs and other dangerous jobs. If electricians and others go out on a job, they should be entitled to workers compensation.

OTHER: There currently is a limited exemption in the law for those working in and about the home for domestic servants and those doing home repairs from the worker category.

Persons Testifying on Original Bill: PRO: Steve Gano, Handy.com; Brian Miller, Handy.com; Austin Miller, Self Employed.

CON: Joe Kendo, Washington State Labor Council; Matthew Hepner, Certified Electrical Workers of Washington.

OTHER: Elizabeth Smith, Labor & Industries.

Persons Signed In To Testify But Not Testifying: No one.