
Commerce & Labor Committee

HB 3122

Brief Description: Consolidating, aligning, and clarifying exception tests for determination of independent contractor status under unemployment compensation and workers' compensation laws.

Sponsors: Representatives Conway, Green, Hunt, Kenney, Roberts, Haler, Morrell, Ericks, Hankins, Eddy, Wood, Sells, Chase, Ormsby, Hasegawa, Appleton, Williams, Moeller, Simpson, Sullivan and McIntire.

Brief Summary of Bill

- Consolidates tests for determining whether a worker is an uncovered independent contractor for purposes of coverage under unemployment insurance and workers' compensation laws.

Hearing Date: 1/29/08

Staff: Joan Elgee (786-7106).

Background:

In 2007 the Legislature enacted SB 5926, which created a Joint Legislative Task Force on the Underground Economy in the Construction Industry (Task Force). The Task Force was directed to formulate a state policy to establish cohesion and transparency between state agencies to increase oversight and regulation of the underground construction economy. Over the 2007 interim, the Task Force met six times and adopted recommendations at its final meeting.

One of the issues the Task Force discussed was independent contractor laws. The term "independent contractor" is not defined in law; rather, this concept is embodied in several exception tests to the definition of "worker" in industrial insurance statutes and "employment" in unemployment compensation statutes. If a worker fulfills the tests, the worker is not covered for purposes of workers' compensation and unemployment insurance, and no industrial insurance premiums or unemployment taxes are due. Otherwise, the worker is a covered worker, and premiums and taxes are due.

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.

Industrial insurance and unemployment insurance laws both share a four-part exception test that applies only to construction. These laws also share a six-part test that applies to all industries, including construction. In addition, a three-part test applies only to unemployment insurance and certain persons working under independent contract are covered under industrial insurance. Both sets of laws also contain exceptions for specific industries and sole proprietors and other business owners are exempt.

The Task Force recommended that the different definitions of covered worker and employment exceptions be blended into one consistent definition.

Summary of Bill:

A seven-part test is established to determine when work is done by independent contract. The test applies to both workers' compensation and unemployment compensation. All parts of the following test must be met:

- (1) The person has been and will continue to be free from control or direction over the performance of the service, both under contract and in fact. For purposes of registered contractors or licensed electrical contractors, control or direction is the means by which the result is accomplished or the manner in which the work is performed.
- (2) The service is either outside the usual course of business for which the service is performed, or outside of all the places of the enterprises for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the place of business.
- (3) The individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature, or the individual has a principal place of business, other than that furnished by the employer, that is eligible for a business deduction for federal income tax purposes.
- (4) The individual is responsible for filing, under the contract and in fact, a schedule of expenses with the internal revenue service.
- (5) The individual has an active and valid certificate of registration with the Department of Revenue and an active and valid account with any other required state agencies, and has a Unified Business Identifier number.
- (6) The individual is maintaining a separate set of books or records.
- (7) The individual has a valid contractor registration or electrical contractor license if the work requires the registration or license.

Persons engaged in work that requires a contractor registration or an electrical contractor license no longer meet the test unless the person has the appropriate registration or license. The registration and accounts a person has with state agencies must be active and valid.

Rules Authority: The bill does not address the rule-making powers of an agency.

Appropriation: None.

Fiscal Note: Requested on January 22, 2008.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.