

HOUSE BILL REPORT

HB 2058

As Reported By House Committee On:

Commerce & Labor

Title: An act relating to independent contractors or outside agents who sell or arrange for travel services.

Brief Description: Defining employment.

Sponsors: Representative Robertson.

Brief History:

Committee Activity:

Commerce & Labor: 3/1/95 [DPS].

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Lisk, Chairman; Hargrove, Vice Chairman; Thompson, Vice Chairman; Romero, Ranking Minority Member; Conway, Assistant Ranking Minority Member; Cairnes; Cody; Cole; Fuhrman; Goldsmith and Horn.

Staff: Pam Madson (786-7166).

Background: For purposes of coverage under unemployment insurance, employment is defined as personal services performed for wages or under contract providing for the performance of personal services. Those services performed by individuals for payment that meet the appropriate criteria may not be considered employment for purposes of unemployment insurance coverage.

An individual must show the following to qualify as an independent contractor and not an employee: (1) That he or she is free from control or direction over the performance of the services, (2) that the service performed is outside the normal course of the business for which the service is performed or that the service is not performed on the premises of the business for which the service is performed, and (3) that the individual is independently engaged in a similar occupation or business to that for which the service is performed. In 1991, additional criteria were established that would allow services performed to be excluded from an employment relationship.

Services performed for payment may not be considered employment if they are exempt by statute. Examples include services performed by musicians or entertainers, insurance agents and brokers, real estate agents and brokers, barbers and cosmetologists.

Summary of Substitute Bill: For purposes of unemployment insurance coverage, employment does not include services performed by an outside agent who sells or arranges for travel services that are provided to a travel agent if the outside agent is paid by commission.

Substitute Bill Compared to Original Bill: Reference to an independent contractor is deleted from the bill in that services performed by independent contractors do not constitute employment for coverage under unemployment insurance under current law.

Appropriation: None.

Fiscal Note: Requested February 23, 1995.

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

Testimony For: (Testimony was presented under HB 2047) In the travel business, an outside agent is one who packages special travel services and has special expertise and who is paid by the travel agent on a commission basis. They pay their own taxes and keep track of their own expenses and some qualify as independent contractors under either the three part test or the alternative six part test provided in statute. These outside agents should be under exempt status. Whether a person is an employee or an independent contractor can be a very difficult determination. The department applies the three part test and the six part test that is in statute. There was a recent challenge that resulted in a ruling that found an employment relationship for services provided prior to 1991.

Testimony Against: None.

Testified: (Testimony on HB 2047) Joe Daniels, Washington State Coalition of Travel (pro); and Graeme Sackrison, Employment Security Department.