

SENATE BILL REPORT

SSB 5233

As Passed Senate, March 8, 2017

Title: An act relating to defining the independent contractor status of certain interpreters and translators.

Brief Description: Concerning the independent contractor status of certain interpreters and translators.

Sponsors: Senate Committee on Commerce, Labor & Sports (originally sponsored by Senators Mullet, Palumbo, Rivers and Wilson).

Brief History:

Committee Activity: Commerce, Labor & Sports: 2/08/17, 2/15/17 [DPS, DNP, w/oRec].

Floor Activity:

Passed Senate: 3/08/17, 30-18.

Brief Summary of First Substitute Bill

- Excludes services performed by language translators and interpreters provided for others through agents or brokers from the term employment for purposes of unemployment compensation.
- Excludes any individual performing interpreting or translation services for remuneration under an independent contract with a language service company from the definition of worker; and therefore, mandatory coverage of workers' compensation.

SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

Majority Report: That Substitute Senate Bill No. 5233 be substituted therefor, and the substitute bill do pass.

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

Minority Report: Do not pass.

Signed by Senators Conway, Hasegawa and Saldaña.

Minority Report: That it be referred without recommendation.

Signed by Senator Keiser, Ranking Minority Member.

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.

Staff: Susan Jones (786-7404)

Background: Persons are eligible to receive certain employment-related benefits and employers are obligated to pay certain employment-related taxes or premiums depending on whether the employment is covered or excluded from coverage.

Unemployment Compensation. Unemployment benefits are payable to unemployed workers who worked at least 680 hours in covered employment in their base years and meet other eligibility requirements. Unemployment contributions (taxes) are paid by employers based, in part, on wages paid in covered employment.

Most employment is covered for purposes of unemployment compensation. Personal services performed for a third party pursuant to a contract with a services referral agency are deemed to be employment for the services referral agency when the agency is responsible for the payment of wages for those services. A services referral agency is a business that offers the services of an individual to perform specific tasks for a third party.

Services performed by language interpreters and translators for others through agents or brokers are generally considered to be covered employment.

Industrial Insurance. Industrial insurance benefits are paid to workers who are injured or develop an occupational disease while working in covered employment. Industrial insurance for covered employment is maintained either through the state fund administered by the Department of Labor and Industries or through self-insurance. Both state fund and self-insured employers are immune from civil liability for nonintentional workplace injuries and diseases.

Most employers and workers are covered for purposes of industrial insurance. Language interpreters and translators who provide services for others through agents or brokers are generally considered to be covered.

Summary of First Substitute Bill: Employment, for unemployment compensation purposes, does not include services performed by language translators or interpreters that are provided for others through an agent or broker.

Any individual performing interpreting or translation services for remuneration under an independent contract with a language service company is not a worker, and is not included within the mandatory coverage of workers' compensation.

Language service company means an entity that is engaged in the business of: offering the services of one or more individuals to perform professional interpreting or translation services for a third party; providing associated billing and fee collection services; and providing background or reference information required to facilitate delivery of the services.

The interpreter or translator must perform the services pursuant to a written independent contract and the services must be performed according to the provider's own means and methods.

A language service company is not exempt from L&I audits.

An exempt interpreter or translator may elect coverage in the manner in statute.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: There is a small business owner that spent upwards of \$50,000 to defend that their people are independent contractors. Eighty percent of people in this industry are independent contractors. This bill would avoid these legal defense costs. They are not trying to change the situation when people are really employees. This is modeled after legislation that passed in Oregon over a decade ago. It has been working well there. The collective bargaining unit bill that passed years ago identified them as independent contractors. They are working on language for consensus. State and federal agencies have a lack of understanding of the language interpreter industry. They have to have very specific skills and training. This is not a one size fits all industry. Across the United States, 81 percent of language interpreters are independent contractors. They want to be independent, to maintain flexibility, to be able to work for multiple agencies, and to run their own businesses. There has been a ruling with respect to employment security that one of the groups was properly classifying their interpreters as independent contractors. This was upheld in Superior Court. As contractors, interpreters have the ability to set their own schedules, work for multiple agencies, and negotiate the work on a job by job basis. As employees, they are subject to employers' control.

CON: This would allow the companies to treat interpreters as employees but pay them as independent contractors. Some language interpreter companies get in trouble because they require the interpreters to wear their badges and use their business cards. They tell them how to dress and behave and require certain training. The state should not grant an exemption to an entire industry. Carving out entire industries from people's safety net is a concern.

OTHER: There is a concern about excluding an entire industry. If there is the exercise of direction and control, this is covered employment. Employment is presumed. An employee cannot contract our rights.

Persons Testifying: PRO: Senator Mark Mullet, Prime Sponsor; Vicki Christophersen, Dynamic Language; Sandy Dupleich, Dynamic Language; Vic Marcus, CEO NWI Global.

CON: Joe Kendo, Washington State Labor Council, AFL-CIO; Aida Sanchez-Vela, Interpreter; Milena Calderari-Waldron, Interpreter Local 1671 WFSE; Leroy Mould, Interpreter Local 1671 WFSE.

OTHER: Tammy Fellin, Labor & Industries.

Persons Signed In To Testify But Not Testifying: PRO: Joyce Haines, JCH Consulting; Kristin Quinlan, CEO Certified Language International; Leila Smith, Medical and Social Interpreter/Translator.

CON: Garold Wilson, Local 86 Iron Workers.

OTHER: Neil Gorrell, Unemployment Insurance Director, Employment Security Department.