

HOUSE BILL REPORT

HB 1353

*As Reported By House Committee on:
Commerce & Labor*

Title: An act relating to industrial insurance coverage.

Brief Description: Revising provisions for industrial insurance coverage.

Sponsor(s): Representatives R. King, Jones and Cole; by request of Department of Labor & Industries.

Brief History:

Reported by House Committee on:
Commerce & Labor, February 19, 1991, DPS.

**HOUSE COMMITTEE ON
COMMERCE & LABOR**

Majority Report: *That Substitute House Bill No. 1353 be substituted therefor, and the substitute bill do pass.*
Signed by 7 members: Representatives Heavey, Chair; Cole, Vice Chair; Franklin; Jones; R. King; O'Brien; and Prentice.

Minority Report: *Do not pass.* Signed by 4 members: Representatives Fuhrman, Ranking Minority Member; Lisk, Assistant Ranking Minority Member; Vance; and Wilson.

Staff: Chris Cordes (786-7117).

Background: The state Industrial Insurance Act does not define "employment." However, an employer is any person or business who engages in any work covered by industrial insurance or who contracts with one or more workers when the essence of the contract is the personal labor of the worker. Workers include all persons engaged in employment or working under an independent contract, if the essence of the contract is personal labor for the employer.

Some employments are excluded from mandatory coverage, including the employment of (1) corporate officers who are directors and shareholders of the corporation and (2) sole proprietors and partners, except registered contractors and licensed electricians who have not elected to withdraw. In 1989, the Board of Industrial Insurance Board of Appeals held that a company was not required to pay industrial insurance premiums for its millworkers who were designated

officers and directors, and who each held one share in the company.

Summary of Substitute Bill: The following changes are made in industrial insurance definitions relating to covered employments and employees.

Definition of employment

"Employment" for industrial insurance purposes is defined as personal service of any nature, unlimited by the common law relationship of master and servant and including service in interstate commerce, for wages or under contract for the performance of personal services. Personal services under an independent contract are employment 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 occupation or business of the same nature as that involved in the contract of service.

Definition of employer

The definition of employer is changed (1) to delete the reference to contracts with workers when the essence of the contract is personal labor and (2) to include agreements to remunerate the service performed under the new definition of "employment."

The exemption from the definition of "employer" for a registered contractor who is contracting with a business that is also registered is amended to add that the business must be registered at the time the contract is signed and during all periods of performance.

Definition of worker

The definition of worker is changed (1) to delete the reference to work under an independent contract when the essence of the contract is personal labor and (2) to include all individuals who, for remuneration, perform services defined under the new definition of "employment."

Exclusions from coverage

Registered contractors and licensed electricians who are sole proprietors or partners are excluded from mandatory coverage, but may elect coverage. The requirement that

these sole proprietors and partners must elect to withdraw from mandatory coverage is repealed.

A corporate officer is excluded from mandatory coverage if: (1) the officer is a bona fide executive officer, whose tenure is subject only to action of the directors; (2) the officer holds at least 10 percent of the voting stock; and (3) the officer exercises substantial supervisory control in the daily management of the corporation, with major responsibilities that do not include manual labor, and with annual compensation substantially higher than the annual compensation of the corporation's highest paid worker.

State industrial insurance does not apply to employees who are covered under the Federal Employees' Compensation Act.

Substitute Bill Compared to Original Bill: The provision is deleted from the original bill that would have allowed an exemption from mandatory industrial insurance coverage for a maximum of four corporate officers who own at least 10 percent of the corporate stock. A new provision is added that allows a corporate officer exemption if: (1) the officer is a bona fide executive officer, whose tenure is subject only to action of the directors; (2) the officer holds at least 10 percent of the voting stock; and (3) the officer exercises substantial supervisory control in the daily management of the corporation, with major responsibilities that do not include manual labor, and with annual compensation substantially higher than the annual compensation of the corporation's highest paid worker.

The provisions dealing with independent contractors are changed to conform with the language describing independent contractors in current unemployment insurance law.

Fiscal Note: Not requested.

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

Testimony For: The bill includes provisions that would simplify the definition of employee and make it consistent with other agencies that collect taxes based on employment. Coverage of employees should be the same under all of these laws. The corporate officer exemption is being amended in response to some cases in which employees were designated as officers and coverage was not obtained for these employees. Other changes in the bill eliminate confusing coverage for registered contractors and potential double recovery for some federal employees.

Testimony Against: (1) Unless the language under the industrial insurance law is exactly the same as the language in the unemployment insurance law, the employer may still find that employees are covered under one law and exempt under another. The test for distinguishing an independent contractor from an employee is not precise enough. (2) There should be no exemption for corporate officers. Corporations are abusing the privilege by making employees officers simply to avoid paying taxes on these employees. If an exemption is allowed, it should be very narrow. (3) The corporate officer exemption should be retained. For some businesses, it is necessary to the continuation of the business. (4) Other problems that need to be addressed in the law are not covered in the bill, such as the exemption for registered contractors. (5) The bill should include civil penalties for violations. Note: some concerns raised in testimony against the bill are addressed in the substitute bill.

Witnesses: Bob McCallister, Doug Connell, and Mike Watson, Department of Labor and Industries (in favor); Doug Bohlke, Evergreen State Taxicab Association (opposed to independent contractor provisions); Bill Pickell, Contract Loggers Association (opposed); Lance Palmer (opposed to corporate officer exemption); Jeff Johnson, Washington State Labor Council (with concerns); Gary Smith, Independent Business Association (with concerns); Clif Finch, Association of Washington Business (with concerns); Bob Dilger, Washington Building and Construction Trades Council (with concerns); and Joe Schilling.