

HOUSE BILL REPORT

ESSB 5837

*As Passed House
April 19, 1991*

Title: An act relating to employment.

Brief Description: Revising provisions for industrial insurance and employment compensation coverage.

Sponsor(s): Senate Committee on Commerce & Labor (originally sponsored by Senators Anderson, Owen, Snyder and Matson).

Brief History:

Reported by House Committee on:
Commerce & Labor, April 5, 1991, DPA;
Passed House, April 19, 1991, 97-0.

**HOUSE COMMITTEE ON
COMMERCE & LABOR**

Majority Report: *Do pass as amended.* Signed by 8 members: Representatives Heavey, Chair; Cole, Vice Chair; Franklin; Jones; R. King; O'Brien; Prentice; and Wilson.

Minority Report: *Do not pass.* Signed by 2 members: Representatives Fuhrman, Ranking Minority Member; and Lisk, Assistant Ranking Minority Member.

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 industrial insurance coverage, including sole proprietors and partners other than registered contractors and licensed electricians who have not elected to withdraw from mandatory coverage, and corporate officers who are shareholders of the corporation.

Under the unemployment insurance law, personal services are employment if performed by one or more contractors or subcontractors 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 trade, occupation, profession, or business, of the same nature as that involved in the contract of service.

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

Industrial insurance

Definition of employment. As an alternative to existing law, personal services are not employment if performed by one or more contractors or subcontractors if: (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, the service is performed outside all of the places of business of the enterprise, or the individual is responsible for the costs of the place of business from which the service is performed; (3) the individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service or has a principal place of business eligible for a business tax deduction; (4) on the effective date of the contract, the individual is responsible for filing a schedule of expenses with the federal Internal Revenue Service for his or her business; (5) on the effective date of the contract or within a reasonable period, the individual has an account with the Department of Revenue and other agencies as required by law and has a state unified business identifier number; and (6) on the effective date of the contract, the individual is maintaining a separate set of accounting records for the business.

Definition of employer. The definition of employer is changed to exclude persons who contract for services that meet the alternative six-part test.

Definition of worker. The definition of worker is changed to exclude individuals who for remuneration perform services that meet the alternative six-part test.

Exclusions from coverage. Registered contractors and licensed electricians who are sole proprietors and 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.

The exclusion for corporate officers is amended to permit an exclusion if the officer is a bona fide officer, who is voluntarily elected or voluntarily appointed, and is a bona fide director and shareholder. The officer must also exercise substantial control in the daily management of the corporation, with primary responsibilities that do not include manual labor. Alternatively, if a corporation is not a "public company," the corporation may exempt eight or fewer bona fide officers without regard to the officer's performance of manual labor, if the officers are voluntarily elected or voluntarily appointed and exercise substantial control in the daily management of the corporation, or may exempt any number of officers if all of the exempted officers are related by blood within the third degree or marriage.

Other exclusions from mandatory industrial insurance coverage include newspaper carriers and insurance agents, brokers, and solicitors.

Any employee whose employment is excluded from mandatory coverage may be covered at the election of his or her employer.

Unemployment insurance

Covered employment. As an alternative to existing law, personal services do not constitute employment if: (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, the service is performed outside all of the places of business of the enterprise, or the individual is responsible for the costs of the place of business from which the service is performed; (3) the individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service or has a principal place of business eligible for a business tax deduction; (4) on the effective date of the contract, the individual is responsible for filing a schedule of expenses with the federal Internal Revenue Service for his or her business; (5) on the effective date of the contract or within a reasonable period, the individual has an account with the Department of Revenue and other agencies as required by law

and has a state unified business identifier number; and (6) on the effective date of the contract, the individual is maintaining a separate set of accounting records for the business.

The exclusion for services performed by insurance agents and solicitors is amended to include an exclusion for insurance brokers.

Fiscal Note: Available.

Effective Date: January 1, 1992.

Testimony For: There has been a need for many years to clarify when a person is an employee and when he or she is an independent contractor under industrial insurance laws. If the person is holding him or herself out as a business, then he or she should be responsible for state insurance taxes. This bill provides clear guidelines that the Department of Labor and Industries and the Employment Security Department can administer, and that employers and employees can understand.

Testimony Against: Some of the exemptions in the bill are going beyond current policy for covered employments and, for unemployment insurance law, may be out of conformity with federal requirements. The bill needs to address corporate officer exclusions as well as independent contractor exclusions.

Witnesses: (in favor) Senator Ann Anderson, prime sponsor; Walt Corneille, IDS Financial Services and International Association for Financial Planning; Clark Sites, Independent Insurance Agents of Washington; Becky Bogard, Ackerly Communications; Rowland Thompson and Mary Drobka, Allied Daily Newspapers; Clif Finch, Association of Washington Business; Gary Smith, Independent Business Association; Doug Bohlke, Evergreen State Taxi Association; Bill Pickell, Washington Contract Logger Association; and Jerry Farley, Cascade Nursing Services. (in favor, with concerns) Lance Palmer, Washington State Trial Lawyers Association; Bob Dilger, Washington State Building and Construction Trades Council; Graeme Sackrison, Employment Security Department; and Doug Connell, Department of Labor and Industries.