

HB

726

COMMITTEE REPORT

HOUSE

(5)

FURTHER:

2/5/82

Date: 3-4-82

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HB 726

"An Act providing an exemption from the Alaska Employment Security Act for certain employees of certain corporations."

under consideration and ~~(a majority of the committee)~~ ~~(the committee)~~ reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Dr. Rogers
Steve Wagoner
[Signature]
B. Boyama

MEMBERS HAVING
OTHER RECOMMENDATIONS:

R

[Signature]
CHAIRMAN

Date introduced 2-5-82

Date Rec'd. 2-5-82

Referred to

Comm Hearing 3-4-82 - Passed as CS with amendments - 3/4/82 Rec'd. CS from Legal Service
" action taken & chief clerk's office @ 3:10 P.M.

Dept of Labor.
Notified
Spman notified

*Similar concept in Workers Comp. Act
on Fed. reg.*

*Office
Copy*

*3,000 small business companies in AB
Dary Jenkins*

Introduced: 2/5/82
Referred: Labor & Commerce

1 IN THE HOUSE

BY BARNES, HAYES AND CLOCKSIN

Need fiscal note? AS

HOUSE BILL NO. 726

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act providing an exemption from the Alaska Employ-
7 ment Security Act for certain employees of certain
8 corporations."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 *Section 1. AS 23.20.526 is amended by adding a new paragraph to read:

11 (21) service performed for a corporation by an employee of the
12 corporation if

13 (A) the corporation is incorporated under AS 10.05;

14 (B) the corporation is not a government corporation;

15 (C) the employee ^{*is executive officer of the corporation and*} owns directly or indirectly, or has the
16 power to vote, 25 percent or more of any class of voting securities
17 of the corporation; and

18 (D) the employee agrees that the services not be "employ-
19 ment" under this paragraph.

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21
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23 *[Rec. Financial Comm.]*
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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

January 22, 1982

MEMORANDUM

TO: Representative Ramona Barnes
FROM: David Teal *Teal*
Research Staff
RE: Unemployment Insurance
Research Request Number 82-6

Dave Stancliffe requested this agency to examine the possibility of exempting shareholder/employees of a corporation from State unemployment insurance taxes. Provisions which currently accomplish this intent in several states are briefly described below.

California Sole stockholders of corporations are exempt from State unemployment insurance taxes.

Colorado Corporate officers with a majority or controlling interest in the corporation are exempt from State unemployment insurance taxes.

Iowa Shareholder/employees are exempt from State unemployment insurance taxes only if the employer is not subject to the Federal Unemployment Tax Act (FUTA). Attachments to this memorandum define employee for the purpose of FUTA coverage.

Minnesota Shareholder/employees of family agricultural corporations are exempt from State unemployment insurance taxes.

Delaware Officers of corporations performing civil or social functions are exempt from State unemployment insurance taxes if the officers work on a part-time basis and are paid no more than \$75 per week.

Washington Corporate officers may elect exemption from State unemployment insurance taxes if the corporation is not a non-profit or government corporation.

Representative Barnes
 January 22, 1982
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Primary differences among State laws concern the requirements for exemption and whether the exemption is mandatory or optional. Corporate officer status and/or controlling, majority, or sole interest in the corporation are minimum qualifications in most states. The degree of corporate control required for exemption was not specified for Iowa.

In all cases, the exemption is accompanied by loss of FUTA tax credits on services performed by those exempted from State taxes. That is, if the exemption were in effect, the federal unemployment insurance tax rate would increase from a rate of .7 percent to a rate of 3.4 percent on the first \$6,000 of earnings. Assuming annual earnings exceed Alaska's taxable wage base of \$14,600, exemption would provide a net gain to the shareholder/employee of \$118 to \$650 per year, depending on the State tax rate assigned. The table below describes the effects of exemption on employers with minimum and maximum tax rates assigned by the Alaska Department of Labor.

Effect of Exemption from State Unemployment Insurance Taxes
 Alaska 1982

	minimum tax rate (1.22%)		maximum tax rate (4.86%)	
	current law	with exemption	current law	with exemption
FUTA tax	\$ 42	\$204	\$ 42	\$204
employer share	178	0	710	0
employee share	102	0	102	0
TOTAL	\$322	\$204	\$854	\$204
net change	\$118		\$650	

As you are aware, unemployment insurance is an extremely complex subject. If the terminology or law require further explanation, I will be happy to offer my assistance.

Attachments

The employer covered is determined by the number of days or weeks a worker is employed or the amount of the employer's quarterly or yearly payroll. Originally, most State laws covered only those employers who, within a year, had eight or more workers in each of 20 weeks. This was due largely to the coverage provisions of the FUTA. As the States gained experience in administering unemployment insurance and as a result of the 1954 and 1970 amendments to the FUTA smaller firms have been brought under the acts in all States.

Thirty-one States have adopted the Federal definition of employer; i.e., a quarterly payroll of \$1,500 in the calendar year or preceding calendar year or one worker in 20 weeks. Eight States provide the broadest possible coverage by including all employers who have any covered service in their employ. The other States have requirements of less than 20 weeks or payrolls other than \$1,500 in a calendar quarter (Table 100).

110 COVERAGE BY REASON OF A FEDERAL REQUIREMENT

The 1970 and 1976 amendments to the FUTA added to the types of services which, as a condition for approval of the State law, must be covered under the State law. ~~This Federal requirement for the extension of coverage differs from an extension of coverage by reason of Federal coverage. If a State law fails to cover services that are covered under the FUTA, the employer must pay the full Federal tax and the employee may get no benefits based on such services, but certification of the State law is unaffected.~~ If, however, a State law fails to cover services which the Federal law requires the State to cover, or excludes services from coverage, the State law would not be approved for purposes of tax credits against the Federal tax and no employer in the State would receive a tax credit for State contributions.

110.01 Coverage of nonprofit organizations.--Service for nonprofit organizations continues to be excluded from coverage under the FUTA, but some service is required to be covered under the State laws. Coverage under State laws is required for service for nonprofit organizations which employ four or more workers in 20 weeks, are organizations which are described in section 501 (c) (3) of the Federal Internal Revenue Code of 1954, and which are exempt from Federal income tax under section 501 (a) of the code. However, a number of States have covered nonprofit organizations under the regular coverage provisions. The State law is required to give each nonprofit organization that must be covered an option on financing benefits. Such nonprofit organizations must be given the right either to reimburse the State for benefits paid or pay contributions under the State law's regular tax provisions.

110.02 Coverage of governmental entities.--The Federal law requires that States cover most services for the State and its political subdivisions. When service is performed for an instrumentality owned by more than one State or political subdivision, coverage is determined based on the location of the work. See section 120. States are required to pay compensation based on service with a governmental entity or a nonprofit organization under the same terms and conditions as for other covered services. There are, however, special provisions applicable to school personnel between school terms. See section 450.03 for a discussion of these special provisions. The States are required to provide local governmental entities a choice of financing benefits either through reimbursement, contributions, or any other method deemed feasible by the State (Table 209).

Since the Federal law includes no size-of-firm restrictions for governmental entities as it does for nonprofit organizations, all governmental entities, regardless of size, must be covered. There are, however, certain types of services which the

*Comparison of State Unemployment Insurance Laws
U.S. Dept of Labor, Manpower Admin.*

MEMORANDUM

State of Alaska

TO: A. G. Zillig, Director
Employment Security Division
Department of Labor

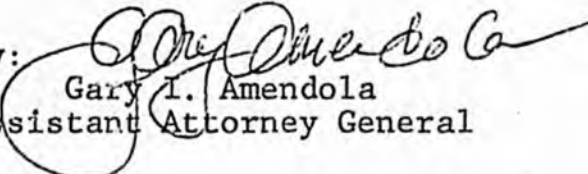
DATE: March 4, 1982

FILE NO:

TELEPHONE NO: 465-3603

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: HB 726 and 863

By: 
Gary I. Amendola
Assistant Attorney General

You requested an opinion whether passage of HB 726 or HB 863 would cause our state unemployment laws to be out of conformity with a portion of the Federal Unemployment Tax Act, 26 U.S.C. § 3306(c).

26 U.S.C. § 3306(c) defines "employment" and exemptions therefrom for purposes of the federal act. AS 23.20.526 parallels the exemptions of the federal act and would be amended by passage of HB 726 or HB 863 as follows:

(a) In this chapter, unless the context otherwise requires, "employment" does not include

(21) service performed for a corporation by an employee of the corporation if

(A) the corporation is incorporated under AS 10.05;

(B) the corporation is not a government corporation;

(C) the employee owns directly or indirectly, or has the power to vote, 25 percent or more of any class of voting securities of the corporation (HB 726); or

(C) the employee is the sole owner of the corporation (HB 863); and

(D) the employee agrees that the services not be "employment" under this paragraph.

AS 23.20.005 and 010 state the purpose and policy of the Alaska Employment Security Act. One of Alaska's stated purposes is to cooperate with other state and federal programs to establish and promote employment systems throughout the several states and to obtain grants and privileges available from the federal government under the Federal Unemployment Tax Act.

The public policy of the State of Alaska is declared to be as follows:

"Economic insecurity due to involuntary unemployment is a serious menace to the health, morals and welfare of the people of the state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread ..." AS 23.20.010.

In State Department of Labor v. Boucher, 586 P2d 660 (Alaska 1978), the Supreme Court indicated that the primary purpose of the Alaska Employment Security Act is to ameliorate the negative effects that involuntary unemployment has on both the unemployed individual and society as a whole. See also Estes v. Department of Labor, 625 P2d 293 (Alaska 1981).

Another general purpose of the federal act (and the state act) and other social welfare acts of its kind is to protect those dependent upon others for employment during periods of high unemployment and times of unemployment due to other personal circumstances. Fahs v. Tregold Co-op Growers of Florida, 166 F2d 40 (CA5 1948); Usury v. Pilgrim Equipment Company, Inc., 527 F2d 1308 (CA Texas 1976).

Non-eligibility for certification under 42 U.S.C. § 503 or nonapproval of a portion of an employment security law of our state under 26 U.S.C. § 3304 would prevent the transfer of certain funds to Alaska from the federal government under 42 U.S.C. § 1103. It is our opinion that although HB 726 and HB 863 would create an additional exemption from the Alaska Employment Security Act, the exemption is not of such a nature that would cause any fiscal sanction against the State of Alaska.

The persons to be exempted from participation in the Alaska Employment Security Act, do not appear to be of the class of persons the act was meant to protect. These

Art Zillig, Director

-3-

March 4, 1982

persons are, by definition, substantial stockholders in the corporations in which they perform the services which they consent should not be deemed employment for the purposes of the act.

In conclusion, although HB 726 and HB 863, if passed, would expand the list of exemptions in the Act beyond that contained in its federal counterpart, the expansion is not such that would give rise to noncertification under 42 U.S.C. § 503 or nonapproval under 26 U.S.C. § 3304.

GTA/bap

FISCAL NOTE

HB 726
file

I. REQUEST

Bill/Resolution No. Committee Substitute for House Bill 726 (L & C)

Title "An Act providing an exemption from the Alaska Employment Security Act"

Requested by House Labor and Commerce Committee Date 3/5/82

II. FISCAL DETAIL

Agency Affected Labor

Program Category Affected Social Services

BRU, Program, or Subprogram(s) Affected Employment Security

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The provisions of this bill would not have a measurable effect on the administrative costs for unemployment insurance nor employer rates for purposes of the Unemployment Insurance Trust Fund.

IV. DATE 3/5/82

PREPARED BY Nico Bus

AGENCY Department of Labor

PHONE 465-2720

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

Published in House Journal Supplement No. 22
March 8, 1982