

SUBJECT: Excluding securities dealers from unemployment compensation

COMMITTEE: Economic Development — favorable, without amendment

VOTE: 8 ayes — Yarbrough, Davis, Luna, Moffat, Raymond, Shields, Solomons, Van de Putte

0 nays

1 absent — Oliveira

WITNESSES: For — None

Against — Walter Hinojosa, Texas AFL-CIO

On — Mike Sheridan, Texas Employment Commission

BACKGROUND: Under Texas law payments to independent contractors are not subject to unemployment compensation tax. "Independent contractor" is not defined in statutory law; the Texas Employment Commission (TEC) relies on case law and the results of audits to determine if workers are employees subject to the tax or are independent contractors.

When TEC finds that an applicant for unemployment compensation has no wage credits, the commission may audit the former employer. If the employer claims the individual was an independent contractor, TEC auditors use a series of questions based on case law to determine the company's liability for unemployment compensation.

DIGEST: HB 427 would amend the Texas Unemployment Compensation Act to exempt for-profit businesses from paying state unemployment compensation taxes on certain stockbrokers working under contract.

A exemption would apply to a securities dealer, agent or salesman if:

- the individual sells securities or provides other services in accordance with the definitions of dealer, agent, or salesman in the Securities Act and is a registered dealer, agent, or salesman;

- the business pays the individual substantially for result rather than for number of hours worked;
- a written contract between the individual and the business specifies that the individual is not treated as an employee for federal tax purposes.

HB 427 would apply to claims for unemployment compensation benefits filed after the effective date of the bill, September 1, 1995.

**SUPPORTERS
SAY:**

HB 427 would simply clarify who is considered an independent contractor in the securities business. Traditionally, securities dealers have been self-employed, and very few brokerage houses in Texas, if any, pay unemployment taxes on these contractors. Brokerage firms would continue to pay unemployment taxes for their workers who are considered employees, but the bill would make clear that they are not responsible for securities dealers who work independently.

The IRS recently has bankrupted a few securities brokerage houses that it says owed past federal income tax withholding taxes. In determining whether or not a worker is an employee or self-employed, for purposes of determining whether income taxes should be withheld, the IRS considers if the state requires the firm to pay unemployment taxes for that individual.

Securities brokerage firms should be able to operate without uncertainty about how to classify their workers and without the threat of costly rulings from the TEC. The brokerage firms must now interpret 20 complicated factors to determine if their workers are employees or independent contractors. HB 427 would provide four clear factors for determining independent contractor status.

**OPPONENTS
SAY:**

Eliminating a group from the unemployment compensation system weakens the system, and this bill would exempt about 20,000 employees. Fewer employers participating means less money for the system. Each session various employers seek exemption to meet their particular interests.

This bill might create rather than solve problems brokerage houses have with the IRS by endangering the tax offset some get as a result of paying state taxes. Businesses in Texas pay a 6.2 percent federal unemployment

tax, but receive a 5.4 percent credit if they paid a timely state unemployment tax, even though the state tax actually paid is on average only around 1.35 percent. The IRS uses 20 common-law factors to divide employees and independent contractors, while Texas would use the four-factor test in this bill. If the IRS determined that a worker was an employee, the business would not receive the state offset credit and would have to pay the full 6.2 percent federal unemployment tax.

TEC already excludes independent contractors from unemployment tax coverage, making this bill unnecessary. Neither would the bill reduce audits, because securities workers would likely still try to claim unemployment benefits, and the TEC would need to determine whether they really met the criteria for being considered an independent contractor.

NOTES:

The House passed a similar bill last session on the Local and Consent Calendar. The bill, HB 747 by Bosse, died in the Senate Economic Development Committee.