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## FISCAL IMPACT REPORT

SPONSOR Lujan, B      DATE TYPED 3/10/2005      HB 850/aHBIC

SHORT TITLE Newspaper Vendor Workers' Comp Coverage      SB \_\_\_\_\_

ANALYST Dunbar

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	See Narrative				

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB653 and SB657

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Labor (DOL)

Workers' Compensation Administration (WCA)

### SUMMARY

#### Synopsis of HBIC Amendment

The House Business and Industry Committee amendment to House Bill 850 deletes language in the Workers Compensation Act defining "Work not Casual Employment" as it relates to newspapers vendors who sell newspapers along or in a public thoroughfare. New language is inserted pertaining to these vendors declaring a newspaper shall either provide accidental injury insurance or workers' compensation insurance, even though the vendor is an independent contractor.

Current approved workers' compensation policies require that an employer/employee relationship exist to write the coverage. WCA indicates that a policy may have to be developed by a carrier and approved by the Insurance Department as a "manuscript policy" (special policy). It may be preferable that a specialized policy be written than to confuse the issue with the definition of employee as the last version of the bill tried to do. Testimony in previous hearing indicted that some newspapers were providing accidental injury insurance to these vendors.

Synopsis of Original Bill

House Bill 850 adds vendors who sells newspapers” along or in” a public thoroughfare to those covered by the workers’ compensation act by declaring that they cannot be considered independent contractors.

The Workers’ Compensation Advisory Council has scheduled this bill for review on February 22d.

Significant Issues

The WCA does not have information pertaining to the number of accidents that have occurred regarding newspaper vendors or how many individuals will be covered in that category. DOL also could not provide information on unemployment compensation that was provided to this category of individuals.

**ADMINISTRATIVE IMPLICATIONS**

The additional case load can be absorbed without additional resources by WCA.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB653 and SB657 are different bills that attempt to define independent contracting elsewhere in the law. If either were enacted, then issues of timing in the signing of bills into law could affect the bill.

**TECHNICAL ISSUES**

The WCA notes that the vendor could be considered a self-employed business person, who is not subject to the Workers Compensation Act because of the numerical exclusion, or could be considered an employee of the newspaper. Since the sponsor wishes the newspaper to provide insurance coverage, an amendment would be helpful to clarify the intent.

If a vendor sells multiple newspapers which employer provides the coverage?  
Will the employers disallow street vending if they incur additional costs?

If the bill is amended to define the vendors as employees; will additional employee benefits be available to these individuals?

**OTHER SUBSTANTIVE ISSUES**

The NMDOL does not administer Workers’ Comp., however, it does administer the Unemployment Insurance program. When in doubt about applying the definition of employee vs independent contractor, the DOL administers the ABC test. The ABC test comprises the following questions:

ABC Test – 51-1-42 Section F

- A) Is there any type of control or direction by the employer to the employee?

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- B) Was the service provided during the course of the business?
- C) Are they independently established in the business? i.e., contractor's license, registered at Tax & Revenue, do they invoice the employer?

Based on the answers to these – a determination is made as to whether the individual is an independent contractor or an employee. Each case is handled independently.

**BS/lg:yr**