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ESSB 5837 - H AMD 620 ADOPTED 4-19-91

2 By Representatives Heavey and Lisk

3 Strike everything after the enacting clause and insert the
4 following:

5 "NEW SECTION. **Sec. 1.** A new section is added to chapter
6 51.08 RCW to read as follows:

7 As a separate alternative to the definition of "employer"
8 under section 2 of this act and the definition of "worker" under
9 section 3 of this act, services performed by an individual for
10 remuneration shall not constitute employment subject to this title
11 if it is shown that:

12 (1) The individual has been and will continue to be free from
13 control or direction over the performance of the service, both
14 under the contract of service and in fact; and

15 (2) The service is either outside the usual course of business
16 for which the service is performed, or the service is performed
17 outside all of the places of business of the enterprise for which
18 the service is performed, or the individual is responsible, both
19 under the contract and in fact, for the costs of the principal
20 place of business from which the service is performed; and

21 (3) The individual is customarily engaged in an independently
22 established trade, occupation, profession, or business, of the same
23 nature as that involved in the contract of service, or the
24 individual has a principal place of business for the business the

1 individual is conducting that is eligible for a business deduction
2 for federal income tax purposes; and

3 (4) On the effective date of the contract of service, the
4 individual is responsible for filing at the next applicable filing
5 period, both under the contract of service and in fact, a schedule
6 of expenses with the internal revenue service for the type of
7 business the individual is conducting; and

8 (5) On the effective date of the contract of service, or
9 within a reasonable period after the effective date of the
10 contract, the individual has established an account with the
11 department of revenue, and other state agencies as required by the
12 particular case, for the business the individual is conducting for
13 the payment of all state taxes normally paid by employers and
14 businesses and has registered for and received a unified business
15 identifier number from the state of Washington; and

16 (6) On the effective date of the contract of service, the
17 individual is maintaining a separate set of books or records that
18 reflect all items of income and expenses of the business which the
19 individual is conducting."

20 "Sec. 2. RCW 51.08.070 and 1981 c 128 s 1 are each amended to
21 read as follows:

22 "Employer" means any person, body of persons, corporate or
23 otherwise, and the legal representatives of a deceased employer,
24 all while engaged in this state in any work covered by the
25 provisions of this title, by way of trade or business, or who

1 contracts with one or more workers, the essence of which is the
2 personal labor of such worker or workers. Or as a separate
3 alternative, persons or entities are not employers when they
4 contract or agree to remunerate the services performed by an
5 individual who meets the tests set forth in subsections (1) through
6 (6) of section 1 of this act.

7 For the purposes of this title, a contractor registered under
8 chapter 18.27 RCW or licensed under chapter 19.28 RCW is not an
9 employer when:

10 (1) Contracting with any other person, firm, or corporation
11 currently engaging in a business which is registered under chapter
12 18.27 RCW or licensed under chapter 19.28 RCW;

13 (2) The person, firm, or corporation has a principal place of
14 business which would be eligible for a business deduction for
15 internal revenue service tax purposes other than that furnished by
16 the contractor for which the business has contracted to furnish
17 services;

18 (3) The person, firm, or corporation maintains a separate set
19 of books or records that reflect all items of income and expenses
20 of the business; and

21 (4) The work which the person, firm, or corporation has
22 contracted to perform is:

23 (a) The work of a contractor as defined in RCW 18.27.010; or

24 (b) The work of installing wires or equipment to convey
25 electric current or installing apparatus to be operated by such

1 current as it pertains to the electrical industry as described in
2 chapter 19.28 RCW."

3 "Sec. 3. RCW 51.08.180 and 1987 c 175 s 3 are each amended to
4 read as follows:

5 (1) "Worker" means every person in this state who is engaged
6 in the employment of an employer under this title, whether by way
7 of manual labor or otherwise in the course of his or her
8 employment; also every person in this state who is engaged in the
9 employment of or who is working under an independent contract, the
10 essence of which is his or her personal labor for an employer under
11 this title, whether by way of manual labor or otherwise, in the
12 course of his or her employment, or as a separate alternative, a
13 person is not a worker if he or she meets the tests set forth in
14 subsections (1) through (6) of section 1 of this act: PROVIDED,
15 That a person is not a worker for the purpose of this title, with
16 respect to his or her activities attendant to operating a truck
17 which he or she owns, and which is leased to a common or contract
18 carrier.

19 (2) For the purposes of this title, any person, firm, or
20 corporation currently engaging in a business which is registered
21 under chapter 18.27 RCW or licensed under chapter 19.28 RCW is not
22 a worker when:

23 (a) Contracting to perform work for any contractor registered
24 under chapter 18.27 RCW or licensed under chapter 19.28 RCW;

1 (b) The person, firm, or corporation has a principal place of
2 business which would be eligible for a business deduction for
3 internal revenue service tax purposes other than that furnished by
4 the contractor for which the business has contracted to furnish
5 services;

6 (c) The person, firm, or corporation maintains a separate set
7 of books or records that reflect all items of income and expenses
8 of the business; and

9 (d) The work which the person, firm, or corporation has
10 contracted to perform is:

11 (i) The work of a contractor as defined in RCW 18.27.010; or

12 (ii) The work of installing wires or equipment to convey
13 electric current or installing apparatus to be operated by such
14 current as it pertains to the electrical industry as described in
15 chapter 19.28 RCW.

16 (3) Any person, firm, or corporation registered under chapter
17 18.27 RCW or licensed under chapter 19.28 RCW including those
18 performing work for any contractor registered under chapter 18.27
19 RCW or licensed under chapter 19.28 RCW is a worker when the
20 contractor supervises or controls the means by which the result is
21 accomplished or the manner in which the work is performed.

22 (4) For the purposes of this title, any person participating
23 as a driver or back-up driver in commuter ride sharing, as defined
24 in RCW 46.74.010(1), is not a worker while driving a ride-sharing
25 vehicle on behalf of the owner or lessee of the vehicle."

1 "**Sec. 4.** RCW 51.12.020 and 1987 c 316 s 2 are each amended to
2 read as follows:

3 The following are the only employments which shall not be
4 included within the mandatory coverage of this title:

5 (1) Any person employed as a domestic servant in a private
6 home by an employer who has less than two employees regularly
7 employed forty or more hours a week in such employment.

8 (2) Any person employed to do gardening, maintenance, repair,
9 remodeling, or similar work in or about the private home of the
10 employer.

11 (3) A person whose employment is not in the course of the
12 trade, business, or profession of his or her employer and is not in
13 or about the private home of the employer.

14 (4) Any person performing services in return for aid or
15 sustenance only, received from any religious or charitable
16 organization.

17 (5) Sole proprietors or partners(~~(\div PROVIDED, That after July~~
18 ~~26, 1981, sole proprietors or partners who for the first time~~
19 ~~register under chapter 18.27 RCW or become licensed for the first~~
20 ~~time under chapter 19.28 RCW shall be included under the mandatory~~
21 ~~coverage provisions of this title subject to the provisions of RCW~~
22 ~~51.32.030. These persons may elect to withdraw from coverage under~~
23 ~~RCW 51.12.115))).~~

24 (6) Any child under eighteen years of age employed by his or
25 her parent or parents in agricultural activities on the family

1 farm.

2 (7) Jockeys while participating in or preparing horses for
3 race meets licensed by the Washington horse racing commission
4 pursuant to chapter 67.16 RCW.

5 (8)(a) Except as otherwise provided in (b) of this subsection,
6 any bona fide officer of a corporation voluntarily elected ((and
7 empowered)) or voluntarily appointed in accordance with the
8 articles of incorporation or bylaws of ((a) the corporation, who at
9 all times during the period involved is also a bona fide director,
10 and who is also a shareholder of the corporation. Only such
11 officers who exercise substantial control in the daily management
12 of the corporation and whose primary responsibilities do not
13 include the performance of manual labor are included within this
14 subsection.

15 (b) Alternatively, a corporation that is not a "public
16 company" as defined in RCW 23B.01.400(19) may exempt eight or fewer
17 bona fide officers, who are voluntarily elected or voluntarily
18 appointed in accordance with the articles of incorporation or
19 bylaws of the corporation and who exercise substantial control in
20 the daily management of the corporation, from coverage under this
21 title without regard to the officers' performance of manual labor
22 if the exempted officer is a shareholder of the corporation, or may
23 exempt any number of officers if all the exempted officers are
24 related by blood within the third degree or marriage. If a
25 corporation that is not a "public company" elects to be covered

1 under subsection (8)(a) of this section, the corporation's election
2 must be made on a form prescribed by the department and under such
3 reasonable rules as the department may adopt.

4 (c) Determinations respecting the status of persons performing
5 services for a corporation shall be made, in part, by reference to
6 Title 23B RCW and to compliance by the corporation with its own
7 articles of incorporation and bylaws. For the purpose of
8 determining coverage under this title, substance shall control over
9 form, and mandatory coverage under this title shall extend to all
10 workers of this state, regardless of honorary titles conferred upon
11 those actually serving as workers.

12 ~~((However, any))~~ (d) A corporation may elect to cover ((such))
13 officers who are ((in fact employees of the corporation)) exempted
14 by this subsection in the manner provided by RCW 51.12.110.

15 (9) Services rendered by a musician or entertainer under a
16 contract with a purchaser of the services, for a specific
17 engagement or engagements when such musician or entertainer
18 performs no other duties for the purchaser and is not regularly and
19 continuously employed by the purchaser. A purchaser does not
20 include the leader of a group or recognized entity who employs
21 other than on a casual basis musicians or entertainers.

22 (10) Services performed by a newspaper carrier selling or
23 distributing newspapers on the street or from house to house.

24 (11) Services performed by an insurance agent, insurance
25 broker, or insurance solicitor, as defined in RCW 48.17.010,

1 48.17.020, and 48.17.030, respectively."

2 "Sec. 5. RCW 51.12.110 and 1982 c 63 s 17 are each amended to
3 read as follows:

4 Any employer who has in his or her employment any person or
5 persons excluded from mandatory coverage pursuant to RCW 51.12.020
6 (~~((1), (2), (3), (4), (6), (7), (8), or (9))~~) may file notice in
7 writing with the director, on such forms as the department may
8 provide, of his or her election to make such persons otherwise
9 excluded subject to this title. The employer shall forthwith
10 display in a conspicuous manner about his or her works, and in a
11 sufficient number of places to reasonably inform his or her workers
12 of the fact, printed notices furnished by the department stating
13 that he or she has so elected. Said election shall become
14 effective upon the filing of said notice in writing. The employer
15 and his or her workers shall be subject to all the provisions of
16 this title and entitled to all of the benefits thereof: PROVIDED,
17 That those who have heretofore complied with the foregoing
18 conditions and are carried and considered by the department as
19 within the purview of this title shall be deemed and considered as
20 having fully complied with its terms and shall be continued by the
21 department as entitled to all of the benefits and subject to all of
22 the liabilities without other or further action. Any employer who
23 has complied with this section may withdraw his or her acceptance
24 of liability under this title by filing written notice with the

1 director of the withdrawal of his or her acceptance. Such
2 withdrawal shall become effective thirty days after the filing of
3 such notice or on the date of the termination of the security for
4 payment of compensation, whichever last occurs. The employer
5 shall, at least thirty days before the effective date of the
6 withdrawal, post reasonable notice of such withdrawal where the
7 affected worker or workers work and shall otherwise notify
8 personally the affected workers. Withdrawal of acceptance of this
9 title shall not affect the liability of the department or self-
10 insurer for compensation for any injury occurring during the period
11 of acceptance.

12 The department shall have the power to cancel the elective
13 adoption coverage if any required payments or reports have not been
14 made. Cancellation by the department shall be no later than thirty
15 days from the date of notice in writing by the department advising
16 of cancellation being made."

17 "Sec. 6. RCW 50.04.140 and 1945 c 35 s 15 are each amended to
18 read as follows:

19 Services performed by an individual for remuneration shall be
20 deemed to be employment subject to this title unless and until it
21 is shown to the satisfaction of the commissioner that:

22 (1)(a) Such individual has been and will continue to be free
23 from control or direction over the performance of such service,
24 both under his or her contract of service and in fact; and

1 ~~((2))~~ (b) Such service is either outside the usual course of
2 business for which such service is performed, or that such service
3 is performed outside of all the places of business of the
4 enterprises for which such service is performed; and

5 ~~((3))~~ (c) Such individual is customarily engaged in an
6 independently established trade, occupation, profession, or
7 business, of the same nature as that involved in the contract of
8 service.

9 (2) Or as a separate alternative, it shall not constitute
10 employment subject to this title if it is shown that:

11 (a) Such individual has been and will continue to be free from
12 control or direction over the performance of such service, both
13 under his or her contract of service and in fact; and

14 (b) Such service is either outside the usual course of
15 business for which such service is performed, or that such service
16 is performed outside of all the places of business of the
17 enterprises for which such service is performed, or the individual
18 is responsible, both under the contract and in fact, for the costs
19 of the principal place of business from which the service is
20 performed; and

21 (c) Such individual is customarily engaged in an independently
22 established trade, occupation, profession, or business, of the same
23 nature as that involved in the contract of service, or such
24 individual has a principal place of business for the work the
25 individual is conducting that is eligible for a business deduction

1 for federal income tax purposes; and

2 (d) On the effective date of the contract of service, such
3 individual is responsible for filing at the next applicable filing
4 period, both under the contract of service and in fact, a schedule
5 of expenses with the internal revenue service for the type of
6 business the individual is conducting; and

7 (e) On the effective date of the contract of service, or
8 within a reasonable period after the effective date of the
9 contract, such individual has established an account with the
10 department of revenue, and other state agencies as required by the
11 particular case, for the business the individual is conducting for
12 the payment of all state taxes normally paid by employers and
13 businesses and has registered for and received a unified business
14 identifier number from the state of Washington; and

15 (f) On the effective date of the contract of service, such
16 individual is maintaining a separate set of books or records that
17 reflect all items of income and expenses of the business which the
18 individual is conducting."

19 "Sec. 7. RCW 50.04.230 and 1947 c 5 s 24 are each amended to
20 read as follows:

21 The term "employment" shall not include service performed by
22 an insurance agent, insurance broker, or insurance solicitor or a
23 real estate broker or a real estate salesman to the extent he or
24 she is compensated by commission and service performed by an

1 investment company agent or solicitor to the extent he or she is
2 compensated by commission(~~(, the [The])~~). The term "investment
3 company", as used in this (~~(subsection [section],)~~) section is to
4 be construed as meaning an investment company as defined in the act
5 of congress entitled "Investment Company Act of 1940."

6 "NEW SECTION. Sec. 8. RCW 51.12.115 and 1981 c 128 s
7 5 are each repealed."

8 "NEW SECTION. Sec. 9. If any part of this act is found to be
9 in conflict with federal requirements which are a prescribed
10 condition to the allocation of federal funds to the state or the
11 eligibility of employers in this state for federal unemployment tax
12 credits, the conflicting part of this act is hereby declared to be
13 inoperative solely to the extent of the conflict, and such finding
14 or determination shall not affect the operation of the remainder of
15 this act. The rules under this act shall meet federal requirements
16 which are a necessary condition to the receipt of federal funds by
17 the state or the granting of federal unemployment tax credits to
18 employers in this state."

19 "NEW SECTION. Sec. 10. This act shall take effect
20 January 1, 1992."

1 **ESSB 5837** - H AMD
2 By Representative

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4 On page 1, line 1 of the title, after "coverage;" strike the
5 remainder of the title and insert "amending RCW 51.08.070,
6 51.08.180, 51.12.020, 51.12.110, 50.04.140, and 50.04.230; adding
7 a new section to chapter 51.08 RCW; repealing RCW 51.12.115;
8 creating a new section; and providing an effective date."