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ENGROSSED SUBSTITUTE SENATE BILL 5837

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State of Washington                      52nd Legislature                      1991 Regular Session

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

Read first time March 6, 1991.

1            AN ACT Relating to employment; amending RCW 51.08.070, 51.08.180,  
2 51.12.020, 51.12.100, 51.12.110, and 50.04.140; adding a new section to  
3 chapter 51.08 RCW; and repealing RCW 51.12.115.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

7            (1) "Employment," subject only to the provisions of this title,  
8 means personal service, of whatever nature, unlimited by the  
9 relationship of master and servant as known to the common law or any  
10 other legal relationship, including service in interstate commerce,  
11 performed for wages or under contract calling for the performance of  
12 personal services, written or oral, express or implied.

13            Except as expressly provided in this title, personal services are  
14 considered employment by the employer if the personal services are  
15 performed for an employing unit by one or more contractors or

1 subcontractors, acting individually or as a partnership, and do not  
2 meet the provisions of subsection (2) of this section. However, the  
3 contractor or subcontractor is an employer under this title with  
4 respect to personal services performed by individuals for the  
5 contractor or subcontractor.

6 (2) Services performed by an individual in the course of employment  
7 by an employer under this title, whether by way of manual labor or  
8 otherwise, including all services performed by an individual for  
9 remuneration constitute employment unless and until it is shown to the  
10 satisfaction of the department that:

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

14 (b) The service is either outside the usual course of business for  
15 which the service is performed, or the service is performed outside all  
16 of the places of business of the enterprise for which the service is  
17 performed; and

18 (c) The individual is customarily engaged in an independently  
19 established trade, occupation, profession, or business, of the same  
20 nature as that involved in the contract of service, or the individual  
21 has a principal place of business for the business the individual is  
22 conducting that is eligible for a business deduction for federal income  
23 tax purposes; and

24 (d) The individual is filing a schedule of expenses with the  
25 internal revenue service for the type of business the individual is  
26 conducting; and

27 (e) The individual has established an account with the department  
28 of revenue, and other state agencies as required by the particular  
29 case, for the business the individual is conducting for the payment of  
30 all state taxes normally paid by employers and businesses and has

1 registered for and received a unified business identifier number from  
2 the state of Washington; and

3 (f) The individual maintains a separate set of books or records  
4 that reflect all items of income and expenses of the business which the  
5 individual is conducting.

6 **Sec. 2.** RCW 51.08.070 and 1981 c 128 s 1 are each amended to read  
7 as follows:

8 "Employer" means any person, body of persons, corporate or  
9 otherwise, and the legal representatives of a deceased employer, all  
10 while engaged in this state in any work covered by the provisions of  
11 this title, by way of trade or business, or who contracts (~~with one or~~  
12 ~~more workers, the essence of which is the personal labor of such worker~~  
13 ~~or workers~~) or agrees to remunerate the services performed by an  
14 individual, as provided in section 1 of this act.

15 For the purposes of this title, a contractor registered under  
16 chapter 18.27 RCW or licensed under chapter 19.28 RCW is not an  
17 employer when:

18 (1) Contracting with any other person, firm, or corporation  
19 currently engaging in a business which is, at the time of signature of  
20 the contract and during all periods of performance, registered under  
21 chapter 18.27 RCW or licensed under chapter 19.28 RCW;

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

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

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

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

4 (b) The work of installing wires or equipment to convey electric  
5 current or installing apparatus to be operated by such current as it  
6 pertains to the electrical industry as described in chapter 19.28 RCW.

7 **Sec. 3.** RCW 51.08.180 and 1987 c 175 s 3 are each amended to read  
8 as follows:

9 (1) "Worker" means every person in this state who is engaged in the  
10 employment of an employer under this title, whether by way of manual  
11 labor or otherwise in the course of his or her employment; (~~also every~~  
12 ~~person in this state who is engaged in the employment of or who is~~  
13 ~~working under an independent contract, the essence of which is his or~~  
14 ~~her personal labor for an employer under this title, whether by way of~~  
15 ~~manual labor or otherwise, in the course of his or her employment)) and  
16 includes all individuals who, for remuneration, perform any services,  
17 as provided in section 1 of this act, for any person, body of persons,  
18 corporate or otherwise, or the legal representative thereof: PROVIDED,  
19 That a person is not a worker for the purpose of this title, with  
20 respect to his or her activities attendant to operating a truck which  
21 he or she owns, and which is leased to a common or contract carrier.~~

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

26 (a) Contracting to perform (~~work~~) services for any other  
27 contractor registered under chapter 18.27 RCW or licensed under chapter  
28 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 internal  
3 revenue service tax purposes other than that furnished by the  
4 contractor for which the business has contracted to furnish services;

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

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

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

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

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

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

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

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

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

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

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

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

12 (5) Sole proprietors or partners(~~(: PROVIDED, That after July 26,~~  
13 ~~1981, sole proprietors or partners who for the first time register~~  
14 ~~under chapter 18.27 RCW or become licensed for the first time under~~  
15 ~~chapter 19.28 RCW shall be included under the mandatory coverage~~  
16 ~~provisions of this title subject to the provisions of RCW 51.32.030.~~  
17 ~~These persons may elect to withdraw from coverage under RCW~~  
18 ~~51.12.115)).~~

19 (6) Any child under eighteen years of age employed by his parent or  
20 parents in agricultural activities on the family farm.

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

24 (8) Any officer of a corporation elected and empowered in  
25 accordance with the articles of incorporation or bylaws of a  
26 corporation who at all times during the period involved is also a  
27 director and shareholder of the corporation.

28 However, any corporation may elect to cover such officers who are  
29 in fact employees of the corporation in the manner provided by RCW  
30 51.12.110.

1 (9) Services rendered by a musician or entertainer under a contract  
2 with a purchaser of the services, for a specific engagement or  
3 engagements when such musician or entertainer performs no other duties  
4 for the purchaser and is not regularly and continuously employed by the  
5 purchaser. A purchaser does not include the leader of a group or  
6 recognized entity who employs other than on a casual basis musicians or  
7 entertainers.

8 (10) Services rendered which meet all of the following conditions:

9 (a) performed by an individual pursuant to a contract for a  
10 specific project on a casual and not an ongoing basis;

11 (b) performed outside all the places of business of the purchaser  
12 of the services;

13 (c) performed by an individual sixty-two years of age or older,  
14 who, at the time the contract is entered into is receiving federal  
15 social security retirement benefits; and

16 (d) total compensation earned shall not exceed the amount that may  
17 be earned without reducing the social security benefit.

18 **Sec. 5.** RCW 51.12.100 and 1988 c 271 s 2 are each amended to read  
19 as follows:

20 (1) The provisions of this title shall not apply to a master or  
21 member of a crew of any vessel, or to employers and workers for whom a  
22 right or obligation exists under the maritime laws or federal  
23 employees' compensation act for personal injuries or death of such  
24 workers.

25 (2) If an accurate segregation of payrolls of workers for whom such  
26 a right or obligation exists under the maritime laws cannot be made by  
27 the employer, the director is hereby authorized and directed to fix  
28 from time to time a basis for the approximate segregation of the  
29 payrolls of employees to cover the part of their work for which no

1 right or obligation exists under the maritime laws for injuries or  
2 death occurring in such work, and the employer, if not a self-insurer,  
3 shall pay premiums on that basis for the time such workers are engaged  
4 in their work.

5 (3) Where two or more employers are simultaneously engaged in a  
6 common enterprise at one and the same site or place in maritime  
7 occupations under circumstances in which no right or obligation exists  
8 under the maritime laws for personal injuries or death of such workers,  
9 such site or place shall be deemed for the purposes of this title to be  
10 the common plant of such employers.

11 (4) In the event payments are made under this title prior to the  
12 final determination under the maritime laws or federal employees'  
13 compensation act, such benefits shall be repaid by the worker or  
14 beneficiary if recovery is subsequently made under the maritime laws or  
15 federal employees' compensation act.

16 **Sec. 6.** RCW 51.12.110 and 1982 c 63 s 17 are each amended to read  
17 as follows:

18 Any employer who has in his or her employment any person or persons  
19 excluded from mandatory coverage pursuant to RCW 51.12.020 (~~((1), (2),~~  
20 ~~(3), (4), (6), (7), (8), or (9))~~) may file notice in writing with the  
21 director, on such forms as the department may provide, of his or her  
22 election to make such persons otherwise excluded subject to this title.  
23 The employer shall forthwith display in a conspicuous manner about his  
24 or her works, and in a sufficient number of places to reasonably inform  
25 his or her workers of the fact, printed notices furnished by the  
26 department stating that he or she has so elected. Said election shall  
27 become effective upon the filing of said notice in writing. The  
28 employer and his or her workers shall be subject to all the provisions  
29 of this title and entitled to all of the benefits thereof: PROVIDED,

1 That those who have heretofore complied with the foregoing conditions  
2 and are carried and considered by the department as within the purview  
3 of this title shall be deemed and considered as having fully complied  
4 with its terms and shall be continued by the department as entitled to  
5 all of the benefits and subject to all of the liabilities without other  
6 or further action. Any employer who has complied with this section may  
7 withdraw his or her acceptance of liability under this title by filing  
8 written notice with the director of the withdrawal of his or her  
9 acceptance. Such withdrawal shall become effective thirty days after  
10 the filing of such notice or on the date of the termination of the  
11 security for payment of compensation, whichever last occurs. The  
12 employer shall, at least thirty days before the effective date of the  
13 withdrawal, post reasonable notice of such withdrawal where the  
14 affected worker or workers work and shall otherwise notify personally  
15 the affected workers. Withdrawal of acceptance of this title shall not  
16 affect the liability of the department or self-insurer for compensation  
17 for any injury occurring during the period of acceptance.

18 The department shall have the power to cancel the elective adoption  
19 coverage if any required payments or reports have not been made.  
20 Cancellation by the department shall be no later than thirty days from  
21 the date of notice in writing by the department advising of  
22 cancellation being made.

23 **Sec. 7.** RCW 50.04.140 and 1945 c 35 s 15 are each amended to read  
24 as follows:

25 Services performed by an individual for remuneration shall be  
26 deemed to be employment subject to this title unless and until it is  
27 shown to the satisfaction of the commissioner that

1 (1) such individual has been and will continue to be free from  
2 control or direction over the performance of such service, both under  
3 his contract of service and in fact; and

4 (2) such service is either outside the usual course of business for  
5 which such service is performed, or that such service is performed  
6 outside of all the places of business of the enterprises for which such  
7 service is performed; and

8 (3) such individual is customarily engaged in an independently  
9 established trade, occupation, profession, or business, of the same  
10 nature as that involved in the contract of service or such individual  
11 has a principal place of business for the work the individual is  
12 conducting that is eligible for a business deduction for federal income  
13 tax purposes; and

14 (4) such individual is filing a schedule of expenses with the  
15 internal revenue service for the type of business the individual is  
16 conducting; and

17 (5) such individual has established an account with the department  
18 of revenue, and other state agencies as required by the particular  
19 case, for the business the individual is conducting for the payment of  
20 all state taxes normally paid by employers and businesses and has  
21 registered for and received a unified business identifier number from  
22 the state of Washington; and

23 (6) such individual maintains a separate set of books or records  
24 that reflect all items of income and expenses of the business which the  
25 individual is conducting.

26 NEW SECTION. Sec. 8. A new section is added to chapter 50.04 RCW  
27 to read as follows:

28 The term "employment" shall not include services rendered which  
29 meet all of the following conditions:

1 (1) performed by an individual pursuant to a contract for a  
2 specific project on a casual and not ongoing basis;

3 (2) performed outside all the places of business of the purchaser  
4 of the services;

5 (3) performed by an individual sixty-two years of age or older,  
6 who, at the time the contract is entered into is receiving federal  
7 social security retirement benefits; and

8 (4) total compensation earned shall not exceed the amount that may  
9 be earned without reducing the social security benefit.

10 NEW SECTION. **Sec. 9.** RCW 51.12.115 and 1981 c 128 s 5 are  
11 each repealed.