

**SHB 3122 - H AMD 1049**

By Representative Conway

ADOPTED 02/14/2008

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 50.04.145 and 1983 1st ex.s. c 23 s 25 are each  
4 amended to read as follows:

5 The term "employment" shall not include services which require  
6 registration under chapter 18.27 RCW or licensing under chapter 19.28  
7 RCW rendered by ((any person, firm, or corporation currently engaging  
8 in a business which is registered under chapter 18.27 RCW or licensed  
9 under chapter 19.28 RCW)) an individual when:

10 (1) (~~Contracting to perform work for any contractor registered~~  
11 ~~under chapter 18.27 RCW or licensed under chapter 19.28 RCW)) The  
12 individual has been and will continue to be free from control or  
13 direction over the performance of the service, both under the contract  
14 of service and in fact;~~

15 (2) (~~The person, firm, or corporation has a principal place of~~  
16 ~~business which would be eligible for a business deduction for internal~~  
17 ~~revenue service tax purposes other than that furnished by the~~  
18 ~~contractor for which the business has contracted to furnish services))  
19 The service is either outside the usual course of business for which  
20 the service is performed, or the service is performed outside of all  
21 the places of business of the enterprise for which the service is  
22 performed, or the individual is responsible, both under the contract  
23 and in fact, for the costs of the principal place of business from  
24 which the service is performed;~~

25 (3) (~~The person, firm, or corporation maintains)) The individual  
26 is customarily engaged in an independently established trade,  
27 occupation, profession, or business, of the same nature as that  
28 involved in the contract of service, or the individual has a principal  
29 place of business for the business the individual is conducting that is~~

1 eligible for a business deduction for federal income tax purposes,  
2 other than that furnished by the employer for which the business has  
3 contracted to furnish services;

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

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

17 (6) On the effective date of the contract of service, the  
18 individual is maintaining a separate set of books or records that  
19 reflect all items of income and expenses of the business that the  
20 individual is conducting; 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 electric~~  
25 ~~current or installing apparatus to be operated by such current as it~~  
26 ~~pertains to the electrical industry as described in chapter 19.28 RCW;~~  
27 ~~and~~

28 ~~(5) A contractor registered under chapter 18.27 RCW or licensed~~  
29 ~~under chapter 19.28 RCW does not supervise or control the means by~~  
30 ~~which the result is accomplished or the manner in which the work is~~  
31 ~~performed))~~

32 (7) On the effective date of the contract of service, the  
33 individual has a valid contractor registration pursuant to chapter  
34 18.27 RCW or an electrical contractor license pursuant to chapter 19.28  
35 RCW.

36 **Sec. 2.** RCW 51.08.070 and 1991 c 246 s 2 are each amended to read  
37 as follows:

1 "Employer" means any person, body of persons, corporate or  
2 otherwise, and the legal representatives of a deceased employer, all  
3 while engaged in this state in any work covered by the provisions of  
4 this title, by way of trade or business, or who contracts with one or  
5 more workers, the essence of which is the personal labor of such worker  
6 or workers. Or as ~~((a separate alternative,))~~ an exception to the  
7 definition of employer, persons or entities are not employers when they  
8 contract or agree to remunerate the services performed by an individual  
9 who meets the tests set forth in subsections (1) through (6) of RCW  
10 51.08.195 or the separate tests set forth in section 5 of this act for  
11 work performed that requires registration under chapter 18.27 RCW or  
12 licensing under chapter 19.28 RCW.

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

16 ~~(1) Contracting with any other person, firm, or corporation~~  
17 ~~currently engaging in a business which is registered under chapter~~  
18 ~~18.27 RCW or licensed under chapter 19.28 RCW;~~

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

23 ~~(3) The person, firm, or corporation maintains a separate set of~~  
24 ~~books or records that reflect all items of income and expenses of the~~  
25 ~~business; and~~

26 ~~(4) The work which the person, firm, or corporation has contracted~~  
27 ~~to perform is:~~

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

29 ~~(b) The work of installing wires or equipment to convey electric~~  
30 ~~current or installing apparatus to be operated by such current as it~~  
31 ~~pertains to the electrical industry as described in chapter 19.28~~  
32 ~~RCW.))~~

33 **Sec. 3.** RCW 51.08.180 and 1991 c 246 s 3 are each amended to read  
34 as follows:

35 ~~((1))~~ "Worker" means every person in this state who is engaged in  
36 the employment of an employer under this title, whether by way of  
37 manual labor or otherwise in the course of his or her employment; also

1 every person in this state who is engaged in the employment of or who  
2 is working under an independent contract, the essence of which is his  
3 or her personal labor for an employer under this title, whether by way  
4 of manual labor or otherwise, in the course of his or her employment,  
5 or as ~~((a separate alternative,))~~ an exception to the definition of  
6 worker, a person is not a worker if he or she meets the tests set forth  
7 in subsections (1) through (6) of RCW 51.08.195 or the separate tests  
8 set forth in section 5 of this act for work performed that requires  
9 registration under chapter 18.27 RCW or licensing under chapter 19.28  
10 RCW: PROVIDED, That a person is not a worker for the purpose of this  
11 title, with respect to his or her activities attendant to operating a  
12 truck which he or she owns, and which is leased to a common or contract  
13 carrier.

14 ~~((2) For the purposes of this title, any person, firm, or~~  
15 ~~corporation currently engaging in a business which is registered under~~  
16 ~~chapter 18.27 RCW or licensed under chapter 19.28 RCW is not a worker~~  
17 ~~when:~~

18 ~~(a) Contracting to perform work for any contractor registered under~~  
19 ~~chapter 18.27 RCW or licensed under chapter 19.28 RCW;~~

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

24 ~~(c) The person, firm, or corporation maintains a separate set of~~  
25 ~~books or records that reflect all items of income and expenses of the~~  
26 ~~business; and~~

27 ~~(d) The work which the person, firm, or corporation has contracted~~  
28 ~~to perform is:~~

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

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

33 ~~(3) Any person, firm, or corporation registered under chapter 18.27~~  
34 ~~RCW or licensed under chapter 19.28 RCW including those performing work~~  
35 ~~for any contractor registered under chapter 18.27 RCW or licensed under~~  
36 ~~chapter 19.28 RCW is a worker when the contractor supervises or~~  
37 ~~controls the means by which the result is accomplished or the manner in~~  
38 ~~which the work is performed.~~

1       ~~(4) For the purposes of this title, any person participating as a~~  
2 ~~driver or back-up driver in commuter ride sharing, as defined in RCW~~  
3 ~~46.74.010(1), is not a worker while driving a ride sharing vehicle on~~  
4 ~~behalf of the owner or lessee of the vehicle.))~~

5       **Sec. 4.** RCW 51.08.195 and 1991 c 246 s 1 are each amended to read  
6 as follows:

7       As ((~~a separate alternative~~)) an exception to the definition of  
8 "employer" under RCW 51.08.070 and the definition of "worker" under RCW  
9 51.08.180, services performed by an individual for remuneration shall  
10 not constitute employment subject to this title if it is shown that:

11       (1) 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       (2) 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, or the individual is responsible, both under the contract  
18 and in fact, for the costs of the principal place of business from  
19 which the service is performed; and

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

26       (4) On the effective date of the contract of service, the  
27 individual is responsible for filing at the next applicable filing  
28 period, both under the contract of service and in fact, a schedule of  
29 expenses with the internal revenue service for the type of business the  
30 individual is conducting; and

31       (5) On the effective date of the contract of service, or within a  
32 reasonable period after the effective date of the contract, the  
33 individual has established an account with the department of revenue,  
34 and other state agencies as required by the particular case, for the  
35 business the individual is conducting for the payment of all state  
36 taxes normally paid by employers and businesses and has registered for

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

3 (6) On the effective date of the contract of service, the  
4 individual is maintaining a separate set of books or records that  
5 reflect all items of income and expenses of the business which the  
6 individual is conducting.

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

9 For the purposes of this title, any individual performing services  
10 that require registration under chapter 18.27 RCW or licensing under  
11 chapter 19.28 RCW for remuneration under an independent contract is not  
12 a worker when:

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

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

22 (3) The individual is customarily engaged in an independently  
23 established trade, occupation, profession, or business, of the same  
24 nature as that involved in the contract of service, or the individual  
25 has a principal place of business for the business the individual is  
26 conducting that is eligible for a business deduction for federal income  
27 tax purposes other than that furnished by the employer for which the  
28 business has contracted to furnish services;

29 (4) On the effective date of the contract of service, the  
30 individual is responsible for filing at the next applicable filing  
31 period, both under the contract of service and in fact, a schedule of  
32 expenses with the internal revenue service for the type of business the  
33 individual is conducting;

34 (5) On the effective date of the contract of service, or within a  
35 reasonable period after the effective date of the contract, the  
36 individual has an active and valid certificate of registration with the  
37 department of revenue, and an active and valid account with any other

1 state agencies as required by the particular case, for the business the  
2 individual is conducting for the payment of all state taxes normally  
3 paid by employers and businesses and has registered for and received a  
4 unified business identifier number from the state of Washington;

5 (6) On the effective date of the contract of service, the  
6 individual is maintaining a separate set of books or records that  
7 reflect all items of income and expenses of the business which the  
8 individual is conducting; and

9 (7) On the effective date of the contract of service, the  
10 individual has a valid contractor registration pursuant to chapter  
11 18.27 RCW or an electrical contractor license pursuant to chapter 19.28  
12 RCW.

13 NEW SECTION. **Sec. 6.** If any part of this act is found to be in  
14 conflict with federal requirements which are a prescribed condition to  
15 the allocation of federal funds to the state or the eligibility of  
16 employers in this state for federal unemployment tax credits, the  
17 conflicting part of this act is hereby declared to be inoperative  
18 solely to the extent of the conflict, and such finding or determination  
19 may not affect the operation of the remainder of this act. The rules  
20 under this act shall meet federal requirements which are a necessary  
21 condition to the receipt of federal funds by the state or the granting  
22 of federal unemployment tax credits to employers in this state.

23 NEW SECTION. **Sec. 7.** If any provision of this act or its  
24 application to any person or circumstance is held invalid, the  
25 remainder of the act or the application of the provision to other  
26 persons or circumstances is not affected."

27 Correct the title.

EFFECT: Provides that the contractor exception tests apply only  
to work which requires contractor registration or electrical contractor  
licensing. Adds federal unemployment and state severability clauses.

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