

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 3122

60th Legislature
2008 Regular Session

Passed by the House February 14, 2008
Yeas 92 Nays 2

Speaker of the House of Representatives

Passed by the Senate March 6, 2008
Yeas 33 Nays 16

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 3122** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 3122

Passed Legislature - 2008 Regular Session

State of Washington

60th Legislature

2008 Regular Session

By House Commerce & Labor (originally sponsored by Representatives Conway, Green, Hunt, Kenney, Roberts, Haler, Morrell, Ericks, Hankins, Eddy, Wood, Sells, Chase, Ormsby, Hasegawa, Appleton, Williams, Moeller, Simpson, Sullivan, and McIntire)

READ FIRST TIME 02/05/08.

1 AN ACT Relating to consolidating, aligning, and clarifying
2 exception tests for determination of independent contractor status
3 under unemployment compensation and workers' compensation laws;
4 amending RCW 50.04.145, 51.08.070, 51.08.180, and 51.08.195; adding a
5 new section to chapter 51.08 RCW; and creating a new section.

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

7 **Sec. 1.** RCW 50.04.145 and 1983 1st ex.s. c 23 s 25 are each
8 amended to read as follows:

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

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

1 ~~((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 The service is either outside the usual course of business for which
6 the service is performed, or the service is performed outside of all
7 the places of business of the enterprise for which the service is
8 performed, or the individual is responsible, both under the contract
9 and in fact, for the costs of the principal place of business from
10 which the service is performed;

11 ~~((The person, firm, or corporation maintains))~~ The individual
12 is customarily engaged in an independently established trade,
13 occupation, profession, or business, of the same nature as that
14 involved in the contract of service, or the individual has a principal
15 place of business for the business the individual is conducting that is
16 eligible for a business deduction for federal income tax purposes,
17 other than that furnished by the employer for which the business has
18 contracted to furnish services;

19 (4) On the effective date of the contract of service, the
20 individual is responsible for filing at the next applicable filing
21 period, both under the contract of service and in fact, a schedule of
22 expenses with the internal revenue service for the type of business the
23 individual is conducting;

24 (5) On the effective date of the contract of service, or within a
25 reasonable period after the effective date of the contract, the
26 individual has an active and valid certificate of registration with the
27 department of revenue, and an active and valid account with any other
28 state agencies as required by the particular case, for the business the
29 individual is conducting for the payment of all state taxes normally
30 paid by employers and businesses and has registered for and received a
31 unified business identifier number from the state of Washington;

32 (6) On the effective date of the contract of service, the
33 individual is maintaining a separate set of books or records that
34 reflect all items of income and expenses of the business that the
35 individual is conducting; and

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

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

1 ~~(b) The work of installing wires or equipment to convey electric~~
2 ~~current or installing apparatus to be operated by such current as it~~
3 ~~pertains to the electrical industry as described in chapter 19.28 RCW;~~
4 ~~and~~

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

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

15 "Employer" means any person, body of persons, corporate or
16 otherwise, and the legal representatives of a deceased employer, all
17 while engaged in this state in any work covered by the provisions of
18 this title, by way of trade or business, or who contracts with one or
19 more workers, the essence of which is the personal labor of such worker
20 or workers. Or as ~~((a separate alternative,))~~ an exception to the
21 definition of employer, persons or entities are not employers when they
22 contract or agree to remunerate the services performed by an individual
23 who meets the tests set forth in subsections (1) through (6) of RCW
24 51.08.195 or the separate tests set forth in section 5 of this act for
25 work performed that requires registration under chapter 18.27 RCW or
26 licensing under chapter 19.28 RCW.

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

30 ~~(1) Contracting with any other person, firm, or corporation~~
31 ~~currently engaging in a business which is registered under chapter~~
32 ~~18.27 RCW or licensed under chapter 19.28 RCW;~~

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

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

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

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

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

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

13 ~~((1))~~ "Worker" means every person in this state who is engaged in
14 the employment of an employer under this title, whether by way of
15 manual labor or otherwise in the course of his or her employment; also
16 every person in this state who is engaged in the employment of or who
17 is working under an independent contract, the essence of which is his
18 or her personal labor for an employer under this title, whether by way
19 of manual labor or otherwise, in the course of his or her employment,
20 or as ~~((a separate alternative,))~~ an exception to the definition of
21 worker, a person is not a worker if he or she meets the tests set forth
22 in subsections (1) through (6) of RCW 51.08.195 or the separate tests
23 set forth in section 5 of this act for work performed that requires
24 registration under chapter 18.27 RCW or licensing under chapter 19.28
25 RCW: PROVIDED, That a person is not a worker for the purpose of this
26 title, with respect to his or her activities attendant to operating a
27 truck which he or she owns, and which is leased to a common or contract
28 carrier.

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

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

35 ~~(b) The person, firm, or corporation has a principal place of~~
36 ~~business which would be eligible for a business deduction for internal~~

1 ~~revenue service tax purposes other than that furnished by the~~
2 ~~contractor for which the business has contracted to furnish services;~~

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

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

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

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

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

18 ~~(4) For the purposes of this title, any person participating as a~~
19 ~~driver or back-up driver in commuter ride sharing, as defined in RCW~~
20 ~~46.74.010(1), is not a worker while driving a ride sharing vehicle on~~
21 ~~behalf of the owner or lessee of the vehicle.))~~

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

24 As ((~~a separate alternative~~)) an exception to the definition of
25 "employer" under RCW 51.08.070 and the definition of "worker" under RCW
26 51.08.180, services performed by an individual for remuneration shall
27 not constitute employment subject to this title if it is shown that:

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

31 (2) The service is either outside the usual course of business for
32 which the service is performed, or the service is performed outside all
33 of the places of business of the enterprise for which the service is
34 performed, or the individual is responsible, both under the contract
35 and in fact, for the costs of the principal place of business from
36 which the service is performed; and

1 (3) The individual is customarily engaged in an independently
2 established trade, occupation, profession, or business, of the same
3 nature as that involved in the contract of service, or the individual
4 has a principal place of business for the business the individual is
5 conducting that is eligible for a business deduction for federal income
6 tax purposes; and

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

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

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

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

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

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

33 (2) The service is either outside the usual course of business for
34 which the service is performed, or the service is performed outside all
35 of the places of business of the enterprise for which the service is
36 performed, or the individual is responsible, both under the contract

1 and in fact, for the costs of the principal place of business from
2 which the service is performed;

3 (3) The individual is customarily engaged in an independently
4 established trade, occupation, profession, or business, of the same
5 nature as that involved in the contract of service, or the individual
6 has a principal place of business for the business the individual is
7 conducting that is eligible for a business deduction for federal income
8 tax purposes other than that furnished by the employer for which the
9 business has contracted to furnish services;

10 (4) On the effective date of the contract of service, the
11 individual is responsible for filing at the next applicable filing
12 period, both under the contract of service and in fact, a schedule of
13 expenses with the internal revenue service for the type of business the
14 individual is conducting;

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

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

27 (7) On the effective date of the contract of service, the
28 individual has a valid contractor registration pursuant to chapter
29 18.27 RCW or an electrical contractor license pursuant to chapter 19.28
30 RCW.

31 NEW SECTION. **Sec. 6.** If any part of this act is found to be in
32 conflict with federal requirements which are a prescribed condition to
33 the allocation of federal funds to the state or the eligibility of
34 employers in this state for federal unemployment tax credits, the
35 conflicting part of this act is hereby declared to be inoperative
36 solely to the extent of the conflict, and such finding or determination
37 may not affect the operation of the remainder of this act. The rules

1 under this act shall meet federal requirements which are a necessary
2 condition to the receipt of federal funds by the state or the granting
3 of federal unemployment tax credits to employers in this state.

4 NEW SECTION. **Sec. 7.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

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