

2SHB 1267 - H AMD 117

By Representative Miloscia

WITHDRAWN 02/28/2011

1 On page 46, after line 17, insert the following:

2

3 "Sec. 72. RCW 49.46.010 and 2010 c 160 s 2 are each amended to  
4 read as follows:

5 As used in this chapter:

6 (1) "Director" means the director of labor and industries;

7 (2) "Wage" means compensation due to an employee by reason of  
8 employment, payable in legal tender of the United States or checks on  
9 banks convertible into cash on demand at full face value, subject to  
10 such deductions, charges, or allowances as may be permitted by rules  
11 of the director;

12 (3) "Employ" includes to permit to work;

13 (4) "Employer" includes any individual, partnership, association,  
14 corporation, business trust, or any person or group of persons acting  
15 directly or indirectly in the interest of an employer in relation to  
16 an employee;

17 (5) "Employee" includes any individual employed by an employer and  
18 any woman acting as a surrogate as defined in RCW 26.26.011, but shall  
19 not include:

20 (a) Any individual (i) employed as a hand harvest laborer and paid  
21 on a piece rate basis in an operation which has been, and is generally  
22 and customarily recognized as having been, paid on a piece rate basis  
23 in the region of employment; (ii) who commutes daily from his or her  
24 permanent residence to the farm on which he or she is employed; and  
25 (iii) who has been employed in agriculture less than thirteen weeks  
26 during the preceding calendar year;

27

1 (b) Any individual employed in casual labor in or about a private  
2 home, unless performed in the course of the employer's trade,  
3 business, or profession;

4 (c) Any individual employed in a bona fide executive,  
5 administrative, or professional capacity or in the capacity of outside  
6 salesperson as those terms are defined and delimited by rules of the  
7 director. However, those terms shall be defined and delimited by the  
8 director of personnel pursuant to chapter 41.06 RCW for employees  
9 employed under the director of personnel's jurisdiction;

10 (d) Any individual engaged in the activities of an educational,  
11 charitable, religious, state or local governmental body or agency, or  
12 nonprofit organization where the employer-employee relationship does  
13 not in fact exist or where the services are rendered to such  
14 organizations gratuitously. If the individual receives reimbursement  
15 in lieu of compensation for normally incurred out-of-pocket expenses  
16 or receives a nominal amount of compensation per unit of voluntary  
17 service rendered, an employer-employee relationship is deemed not to  
18 exist for the purpose of this section or for purposes of membership or  
19 qualification in any state, local government, or publicly supported  
20 retirement system other than that provided under chapter 41.24 RCW;

21 (e) Any individual employed full time by any state or local  
22 governmental body or agency who provides voluntary services but only  
23 with regard to the provision of the voluntary services. The voluntary  
24 services and any compensation therefor shall not affect or add to  
25 qualification, entitlement, or benefit rights under any state, local  
26 government, or publicly supported retirement system other than that  
27 provided under chapter 41.24 RCW;

28 (f) Any newspaper vendor or carrier;

29 (g) Any carrier subject to regulation by Part 1 of the Interstate  
30 Commerce Act;

31 (h) Any individual engaged in forest protection and fire  
32 prevention activities;

33 (i) Any individual employed by any charitable institution charged  
34 with child care responsibilities engaged primarily in the development

1 of character or citizenship or promoting health or physical fitness or  
2 providing or sponsoring recreational opportunities or facilities for  
3 young people or members of the armed forces of the United States;

4 (j) Any individual whose duties require that he or she reside or  
5 sleep at the place of his or her employment or who otherwise spends a  
6 substantial portion of his or her work time subject to call, and not  
7 engaged in the performance of active duties;

8 (k) Any resident, inmate, or patient of a state, county, or  
9 municipal correctional, detention, treatment or rehabilitative  
10 institution;

11 (l) Any individual who holds a public elective or appointive  
12 office of the state, any county, city, town, municipal corporation or  
13 quasi municipal corporation, political subdivision, or any  
14 instrumentality thereof, or any employee of the state legislature;

15 (m) All vessel operating crews of the Washington state ferries  
16 operated by the department of transportation;

17 (n) Any individual employed as a seaman on a vessel other than an  
18 American vessel;

19 (o) Any farm intern providing his or her services to a small farm  
20 which has a special certificate issued under RCW 49.12.465;

21 (6) "Occupation" means any occupation, service, trade, business,  
22 industry, or branch or group of industries or employment or class of  
23 employment in which employees are gainfully employed;

24 (7) "Retail or service establishment" means an establishment  
25 seventy-five percent of whose annual dollar volume of sales of goods  
26 or services, or both, is not for resale and is recognized as retail  
27 sales or services in the particular industry.

28  
29 **Sec. 73.** RCW 49.46.010 and 2010 c 8 s 12040 are each amended to  
30 read as follows:

31 As used in this chapter:

32 (1) "Director" means the director of labor and industries;

33 (2) "Wage" means compensation due to an employee by reason of  
34 employment, payable in legal tender of the United States or checks on

1 banks convertible into cash on demand at full face value, subject to  
2 such deductions, charges, or allowances as may be permitted by rules  
3 of the director;

4 (3) "Employ" includes to permit to work;

5 (4) "Employer" includes any individual, partnership, association,  
6 corporation, business trust, or any person or group of persons acting  
7 directly or indirectly in the interest of an employer in relation to  
8 an employee;

9 (5) "Employee" includes any individual employed by an employer and  
10 any woman acting as a surrogate as defined in RCW 26.26.011, but shall  
11 not include:

12 (a) Any individual (i) employed as a hand harvest laborer and paid  
13 on a piece rate basis in an operation which has been, and is generally  
14 and customarily recognized as having been, paid on a piece rate basis  
15 in the region of employment; (ii) who commutes daily from his or her  
16 permanent residence to the farm on which he or she is employed; and  
17 (iii) who has been employed in agriculture less than thirteen weeks  
18 during the preceding calendar year;

19 (b) Any individual employed in casual labor in or about a private  
20 home, unless performed in the course of the employer's trade,  
21 business, or profession;

22 (c) Any individual employed in a bona fide executive,  
23 administrative, or professional capacity or in the capacity of outside  
24 salesperson as those terms are defined and delimited by rules of the  
25 director. However, those terms shall be defined and delimited by the  
26 director of personnel pursuant to chapter 41.06 RCW for employees  
27 employed under the director of personnel's jurisdiction;

28 (d) Any individual engaged in the activities of an educational,  
29 charitable, religious, state or local governmental body or agency, or  
30 nonprofit organization where the employer-employee relationship does  
31 not in fact exist or where the services are rendered to such  
32 organizations gratuitously. If the individual receives reimbursement  
33 in lieu of compensation for normally incurred out-of-pocket expenses  
34 or receives a nominal amount of compensation per unit of voluntary

1 service rendered, an employer-employee relationship is deemed not to  
2 exist for the purpose of this section or for purposes of membership or  
3 qualification in any state, local government, or publicly supported  
4 retirement system other than that provided under chapter 41.24 RCW;

5 (e) Any individual employed full time by any state or local  
6 governmental body or agency who provides voluntary services but only  
7 with regard to the provision of the voluntary services. The voluntary  
8 services and any compensation therefor shall not affect or add to  
9 qualification, entitlement, or benefit rights under any state, local  
10 government, or publicly supported retirement system other than that  
11 provided under chapter 41.24 RCW;

12 (f) Any newspaper vendor or carrier;

13 (g) Any carrier subject to regulation by Part 1 of the Interstate  
14 Commerce Act;

15 (h) Any individual engaged in forest protection and fire  
16 prevention activities;

17 (i) Any individual employed by any charitable institution charged  
18 with child care responsibilities engaged primarily in the development  
19 of character or citizenship or promoting health or physical fitness or  
20 providing or sponsoring recreational opportunities or facilities for  
21 young people or members of the armed forces of the United States;

22 (j) Any individual whose duties require that he or she reside or  
23 sleep at the place of his or her employment or who otherwise spends a  
24 substantial portion of his or her work time subject to call, and not  
25 engaged in the performance of active duties;

26 (k) Any resident, inmate, or patient of a state, county, or  
27 municipal correctional, detention, treatment or rehabilitative  
28 institution;

29 (l) Any individual who holds a public elective or appointive  
30 office of the state, any county, city, town, municipal corporation or  
31 quasi municipal corporation, political subdivision, or any  
32 instrumentality thereof, or any employee of the state legislature;

33 (m) All vessel operating crews of the Washington state ferries  
34 operated by the department of transportation;

1 (n) Any individual employed as a seaman on a vessel other than an  
2 American vessel;

3 (6) "Occupation" means any occupation, service, trade, business,  
4 industry, or branch or group of industries or employment or class of  
5 employment in which employees are gainfully employed;

6 (7) "Retail or service establishment" means an establishment  
7 seventy-five percent of whose annual dollar volume of sales of goods  
8 or services, or both, is not for resale and is recognized as retail  
9 sales or services in the particular industry."

10

11 Renumber the remaining sections consecutively and correct any  
12 internal references accordingly.

13

14 On page 47, after line 8, insert the following:

15

16 NEW SECTION. Sec. 76. Section 72 of this act expires December  
17 31, 2011.

18

19 NEW SECTION. Sec. 77. Section 73 of this act takes effect December  
20 31, 2011."

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22 Correct the title.

23

24

EFFECT: Defines "employee" under the state Minimum Wage Act as  
including any woman acting as a surrogate.

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