
HOUSE BILL 1701

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Ormsby, Green, Sells, Kenney, Van De Wege, Hasegawa, Hudgins, Moeller, Miloscia, Sullivan, Upthegrove, Pettigrew, Seaquist, Hunter, and Frockt

Read first time 01/31/11. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to the underground economy by addressing the loss
2 in state revenue through misclassification of workers as independent
3 contractors in the construction industry; adding a new section to
4 chapter 18.27 RCW; creating a new section; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the state loses
7 over one hundred million dollars a year in taxes due to underground
8 economy construction activity, causing great inequity to law-abiding
9 businesses and taxpayers. The legislature further finds that an
10 employer in construction is required to pay industrial insurance and
11 unemployment taxes for a worker unless a seven-part independent
12 contractor test is met, which test includes that the worker is free
13 from direction and control and has his or her own books and records.
14 The legislature finds that some contractors avoid taxes by engaging
15 multiple contractors to work on the same task and treating the
16 contractors as exempt independent contractors rather than hiring and
17 paying taxes on these persons as covered workers. The legislature
18 finds, however, that if multiple contractors are working on the same

1 task on a job site, the contractors must be working under direction and
2 control such that they are not exempt independent contractors but are,
3 in fact, covered workers.

4 The legislature finds that the seven-part test is and should
5 continue to be applied in investigations of underground economy
6 activity in the construction industry. However, the legislature also
7 finds that prohibiting up front certain contracting which by its nature
8 creates a situation in which taxes due are not paid will provide
9 clarity to contractors and provide an additional cost-effective means
10 to reduce the underground economy. By enacting section 2 of this act,
11 the legislature intends to define the prohibited contracting narrowly
12 to assure no legitimate contracting is prohibited. The legislature
13 intends that nothing in section 2 of this act prohibits a contractor
14 from engaging more than two independent contractors who have no covered
15 workers to work on the same task so long as those contractors are
16 treated as covered workers.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 18.27 RCW
18 to read as follows:

19 (1) A contractor commits a violation under this chapter and is
20 subject to an infraction if the contractor engages more than two
21 independent contractors to work on a single job site who:

- 22 (a) Are working on the same task;
- 23 (b) Bring no workers to that job site subject to the mandatory
24 coverage of Title 51 RCW; and
- 25 (c) Are not being treated by the contractor as covered workers
26 under Title 51 RCW.

27 (2) A contractor has the burden of proof to show that independent
28 subcontractors engaged by the contractor working in the same trade or
29 occupation on a single job site are not working on the same task.

30 (3)(a) A contractor found to have committed an infraction under
31 this section shall be assessed a fine of:

- 32 (i) Five hundred dollars for a first offense;
- 33 (ii) Two thousand five hundred dollars for a second offense; and
- 34 (iii) Five thousand dollars for a third or subsequent offense.

35 (b) For a third or subsequent offense under this section, the
36 director shall also suspend the contractor's certificate of
37 registration for one year.

1 (c) In addition to any other penalty, the director shall suspend
2 the registration of the contractor until payment of penalties assessed
3 under this section that have become final and are paid in full.

4 (4) For purposes of this section:

5 (a) "Job site" means: (i) A single physical address; or (ii)
6 multiple buildings or addresses or both, if the addresses or buildings
7 are under the same contract with the general contractor.

8 (b) "Trade or occupation" means a trade or occupation as determined
9 by the department of labor and industries under chapter 39.12 RCW.

--- END ---