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HOUSE BILL 2922

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State of Washington

64th Legislature

2016 Regular Session

By Representatives Manweller, Springer, and Tharinger

Read first time 01/27/16. Referred to Committee on Labor & Workplace Standards.

1 AN ACT Relating to employing certain independent contractors  
2 through the use of a digital platform; amending RCW 51.12.020; and  
3 adding a new section to chapter 51.08 RCW.

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

5 **Sec. 1.** RCW 51.12.020 and 2015 c 236 s 4 are each amended to  
6 read as follows:

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

9 (1) Any person employed as a domestic servant in a private home  
10 by an employer who has less than two employees regularly employed  
11 forty or more hours a week in such employment or who secures the  
12 services of a domestic servant through a digital platform as defined  
13 in section 2 of this act.

14 (2) Any person employed to do gardening, maintenance, or repair,  
15 in or about the private home of the employer. For the purposes of  
16 this subsection, "maintenance" means the work of keeping in proper  
17 condition, "repair" means to restore to sound condition after damage,  
18 and "private home" means a person's place of residence. This  
19 subsection includes employers who secure the services of a domestic  
20 servant through a digital platform as defined in section 2 of this  
21 act.

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

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

7 (5) Sole proprietors or partners.

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

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

13 (8)(a) Except as otherwise provided in (b) of this subsection,  
14 any bona fide officer of a corporation voluntarily elected or  
15 voluntarily appointed in accordance with the articles of  
16 incorporation or bylaws of the corporation, who at all times during  
17 the period involved is also a bona fide director, and who is also a  
18 shareholder of the corporation. Only such officers who exercise  
19 substantial control in the daily management of the corporation and  
20 whose primary responsibilities do not include the performance of  
21 manual labor are included within this subsection.

22 (b) Alternatively, a corporation that is not a "public company"  
23 as defined in RCW 23B.01.400 may exempt eight or fewer bona fide  
24 officers, who are voluntarily elected or voluntarily appointed in  
25 accordance with the articles of incorporation or bylaws of the  
26 corporation and who exercise substantial control in the daily  
27 management of the corporation, from coverage under this title without  
28 regard to the officers' performance of manual labor if the exempted  
29 officer is a shareholder of the corporation, or may exempt any number  
30 of officers if all the exempted officers are related by blood within  
31 the third degree or marriage. If a corporation that is not a "public  
32 company" elects to be covered under subsection (8)(a) of this  
33 section, the corporation's election must be made on a form prescribed  
34 by the department and under such reasonable rules as the department  
35 may adopt.

36 (c) Determinations respecting the status of persons performing  
37 services for a corporation shall be made, in part, by reference to  
38 Title 23B RCW and to compliance by the corporation with its own  
39 articles of incorporation and bylaws. For the purpose of determining  
40 coverage under this title, substance shall control over form, and

1 mandatory coverage under this title shall extend to all workers of  
2 this state, regardless of honorary titles conferred upon those  
3 actually serving as workers.

4 (d) A corporation may elect to cover officers who are exempted by  
5 this subsection in the manner provided by RCW 51.12.110.

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

13 (10) Services performed by a newspaper vendor, carrier, or  
14 delivery person selling or distributing newspapers on the street, to  
15 offices, to businesses, or from house to house and any freelance news  
16 correspondent or "stringer" who, using his or her own equipment,  
17 chooses to submit material for publication for free or a fee when  
18 such material is published.

19 (11) Services performed by an insurance producer, as defined in  
20 RCW 48.17.010, or a surplus line broker licensed under chapter 48.15  
21 RCW.

22 (12) Services performed by a booth renter. However, a person  
23 exempted under this subsection may elect coverage under RCW  
24 51.32.030.

25 (13) Members of a limited liability company, if either:

26 (a) Management of the company is vested in its members, and the  
27 members for whom exemption is sought would qualify for exemption  
28 under subsection (5) of this section were the company a sole  
29 proprietorship or partnership; or

30 (b) Management of the company is vested in one or more managers,  
31 and the members for whom the exemption is sought are managers who  
32 would qualify for exemption under subsection (8) of this section were  
33 the company a corporation.

34 (14) A driver providing commercial transportation services as  
35 defined in RCW 48.177.005. The driver may elect coverage in the  
36 manner provided by RCW 51.32.030.

37 (15) For hire vehicle operators under chapter 46.72 RCW who own  
38 or lease the for hire vehicle, chauffeurs under chapter 46.72A RCW  
39 who own or lease the limousine, and operators of taxicabs under

1 chapter 81.72 RCW who own or lease the taxicab. An owner or lessee  
2 may elect coverage in the manner provided by RCW 51.32.030.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 51.08  
4 RCW to read as follows:

5 "Digital platform" means a digital application or digital  
6 platform that (1) provides lists of specified jobs available with  
7 employers other than itself, (2) has written agreements with the  
8 employers and service providers stating that the platform is not the  
9 employer of the service providers, and (3) charges a fee to the  
10 employer and/or worker for its services.

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