
HOUSE BILL 2477

State of Washington

63rd Legislature

2014 Regular Session

By Representatives Reykdal, Sells, Fitzgibbon, Goodman, Pollet, and Moscoso

Read first time 01/20/14. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to commercial janitorial services; amending RCW
2 82.04.050; adding a new section to chapter 49.17 RCW; adding a new
3 section to chapter 82.04 RCW; adding a new section to chapter 43.136
4 RCW; and providing expiration dates.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.17 RCW
7 to read as follows:

8 The department shall establish by rule:

9 (1) Standards to address the workload of employees performing
10 commercial janitorial services. The rule must provide that the maximum
11 square footage of cleanable area per a full-time employee's eight-hour
12 shift may not exceed thirty thousand square feet; and

13 (2) A health and safety training program applicable to employees
14 and supervising managers of commercial janitorial service businesses.
15 The program must, at a minimum, provide for eight hours of training per
16 year.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04 RCW
18 to read as follows:

1 (1) To qualify for the exemption from retail sales taxes under RCW
2 82.04.050(2)(d), a commercial janitorial service business must:

3 (a) Maintain payroll records documenting compliance to workload
4 standards established under section 1 of this act;

5 (b) Classify its workers as employees, or contract with businesses
6 that classify its workers as employees;

7 (c) Provide annually to its employees a minimum of eight hours of
8 health and safety training that has been approved by the department of
9 labor and industries, or certify that the businesses it contracts with
10 have met this requirement;

11 (d) Provide annually to its managers supervising employees a
12 minimum of eight hours of health and safety training that has been
13 approved by the department of labor and industries, or certify that the
14 businesses it contracts with have met this requirement;

15 (e) Not be delinquent on any taxes or fees due to the department;

16 (f) Provide a clear grievance procedure for employees;

17 (g) Have a safety committee, if required by department of labor and
18 industry rules; and

19 (h) Maintain records showing compliance with all meal and rest
20 periods required by law.

21 (2) This section expires July 1, 2024.

22 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.136 RCW
23 to read as follows:

24 (1) The joint legislative audit and review committee must assess
25 the performance of the exemption from retail sales taxes under RCW
26 82.04.050(2)(d) for commercial janitorial service businesses, which
27 expires July 1, 2024. The joint legislative audit and review committee
28 must provide a report to the appropriate committees of the legislature
29 by December 1, 2023.

30 (2) This section expires December 31, 2024.

31 **Sec. 4.** RCW 82.04.050 and 2013 2nd sp.s. c 13 s 802 are each
32 amended to read as follows:

33 (1)(a) "Sale at retail" or "retail sale" means every sale of
34 tangible personal property (including articles produced, fabricated, or
35 imprinted) to all persons irrespective of the nature of their business
36 and including, among others, without limiting the scope hereof, persons

1 who install, repair, clean, alter, improve, construct, or decorate real
2 or personal property of or for consumers other than a sale to a person
3 who:

4 (i) Purchases for the purpose of resale as tangible personal
5 property in the regular course of business without intervening use by
6 such person, but a purchase for the purpose of resale by a regional
7 transit authority under RCW 81.112.300 is not a sale for resale; or

8 (ii) Installs, repairs, cleans, alters, imprints, improves,
9 constructs, or decorates real or personal property of or for consumers,
10 if such tangible personal property becomes an ingredient or component
11 of such real or personal property without intervening use by such
12 person; or

13 (iii) Purchases for the purpose of consuming the property purchased
14 in producing for sale as a new article of tangible personal property or
15 substance, of which such property becomes an ingredient or component or
16 is a chemical used in processing, when the primary purpose of such
17 chemical is to create a chemical reaction directly through contact with
18 an ingredient of a new article being produced for sale; or

19 (iv) Purchases for the purpose of consuming the property purchased
20 in producing ferrosilicon which is subsequently used in producing
21 magnesium for sale, if the primary purpose of such property is to
22 create a chemical reaction directly through contact with an ingredient
23 of ferrosilicon; or

24 (v) Purchases for the purpose of providing the property to
25 consumers as part of competitive telephone service, as defined in RCW
26 82.04.065; or

27 (vi) Purchases for the purpose of satisfying the person's
28 obligations under an extended warranty as defined in subsection (7) of
29 this section, if such tangible personal property replaces or becomes an
30 ingredient or component of property covered by the extended warranty
31 without intervening use by such person.

32 (b) The term includes every sale of tangible personal property that
33 is used or consumed or to be used or consumed in the performance of any
34 activity defined as a "sale at retail" or "retail sale" even though
35 such property is resold or used as provided in (a)(i) through (vi) of
36 this subsection following such use.

37 (c) The term also means every sale of tangible personal property to

1 persons engaged in any business that is taxable under RCW 82.04.280(1)
2 (a), (b), and (g), 82.04.290, and 82.04.2908.

3 (2) The term "sale at retail" or "retail sale" includes the sale of
4 or charge made for tangible personal property consumed and/or for labor
5 and services rendered in respect to the following:

6 (a) The installing, repairing, cleaning, altering, imprinting, or
7 improving of tangible personal property of or for consumers, including
8 charges made for the mere use of facilities in respect thereto, but
9 excluding charges made for the use of self-service laundry facilities,
10 and also excluding sales of laundry service to nonprofit health care
11 facilities, and excluding services rendered in respect to live animals,
12 birds and insects;

13 (b) The constructing, repairing, decorating, or improving of new or
14 existing buildings or other structures under, upon, or above real
15 property of or for consumers, including the installing or attaching of
16 any article of tangible personal property therein or thereto, whether
17 or not such personal property becomes a part of the realty by virtue of
18 installation, and also includes the sale of services or charges made
19 for the clearing of land and the moving of earth excepting the mere
20 leveling of land used in commercial farming or agriculture;

21 (c) The constructing, repairing, or improving of any structure
22 upon, above, or under any real property owned by an owner who conveys
23 the property by title, possession, or any other means to the person
24 performing such construction, repair, or improvement for the purpose of
25 performing such construction, repair, or improvement and the property
26 is then reconveyed by title, possession, or any other means to the
27 original owner;

28 (d) The cleaning, fumigating, razing, or moving of existing
29 buildings or structures, but does not include the charge made for
30 janitorial services; and for purposes of this section the term
31 "janitorial services" means those cleaning and caretaking services
32 ordinarily performed by commercial janitor service businesses meeting
33 the requirements under section 2 of this act, including, but not
34 limited to, wall and window washing, floor cleaning and waxing, and the
35 cleaning in place of rugs, drapes and upholstery. The term "janitorial
36 services" does not include painting, papering, repairing, furnace or
37 septic tank cleaning, snow removal or sandblasting. The exemption for

1 commercial janitor service businesses under this subsection expires
2 July 1, 2024;

3 (e) Automobile towing and similar automotive transportation
4 services, but not in respect to those required to report and pay taxes
5 under chapter 82.16 RCW;

6 (f) The furnishing of lodging and all other services by a hotel,
7 rooming house, tourist court, motel, trailer camp, and the granting of
8 any similar license to use real property, as distinguished from the
9 renting or leasing of real property, and it is presumed that the
10 occupancy of real property for a continuous period of one month or more
11 constitutes a rental or lease of real property and not a mere license
12 to use or enjoy the same. For the purposes of this subsection, it is
13 presumed that the sale of and charge made for the furnishing of lodging
14 for a continuous period of one month or more to a person is a rental or
15 lease of real property and not a mere license to enjoy the same;

16 (g) The installing, repairing, altering, or improving of digital
17 goods for consumers;

18 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of
19 this subsection when such sales or charges are for property, labor and
20 services which are used or consumed in whole or in part by such persons
21 in the performance of any activity defined as a "sale at retail" or
22 "retail sale" even though such property, labor and services may be
23 resold after such use or consumption. Nothing contained in this
24 subsection may be construed to modify subsection (1) of this section
25 and nothing contained in subsection (1) of this section may be
26 construed to modify this subsection.

27 (3) The term "sale at retail" or "retail sale" includes the sale of
28 or charge made for personal, business, or professional services
29 including amounts designated as interest, rents, fees, admission, and
30 other service emoluments however designated, received by persons
31 engaging in the following business activities:

32 (a)(i) Amusement and recreation services including but not limited
33 to golf, pool, billiards, skating, bowling, ski lifts and tows, day
34 trips for sightseeing purposes, and others, when provided to consumers.

35 (ii) Until July 1, 2017, amusement and recreation services do not
36 include the opportunity to dance provided by an establishment in
37 exchange for a cover charge.

38 (iii) For purposes of this subsection (3)(a):

1 (A) "Cover charge" means a charge, regardless of its label, to
2 enter an establishment or added to the purchaser's bill by an
3 establishment or otherwise collected after entrance to the
4 establishment, and the purchaser is provided the opportunity to dance
5 in exchange for payment of the charge.

6 (B) "Opportunity to dance" means that an establishment provides a
7 designated physical space, on either a temporary or permanent basis,
8 where customers are allowed to dance and the establishment either
9 advertises or otherwise makes customers aware that it has an area for
10 dancing;

11 (b) Abstract, title insurance, and escrow services;

12 (c) Credit bureau services;

13 (d) Automobile parking and storage garage services;

14 (e) Landscape maintenance and horticultural services but excluding
15 (i) horticultural services provided to farmers and (ii) pruning,
16 trimming, repairing, removing, and clearing of trees and brush near
17 electric transmission or distribution lines or equipment, if performed
18 by or at the direction of an electric utility;

19 (f) Service charges associated with tickets to professional
20 sporting events; and

21 (g) The following personal services: Physical fitness services,
22 tanning salon services, tattoo parlor services, steam bath services,
23 turkish bath services, escort services, and dating services.

24 (4)(a) The term also includes the renting or leasing of tangible
25 personal property to consumers.

26 (b) The term does not include the renting or leasing of tangible
27 personal property where the lease or rental is for the purpose of
28 sublease or subrent.

29 (5) The term also includes the providing of "competitive telephone
30 service," "telecommunications service," or "ancillary services," as
31 those terms are defined in RCW 82.04.065, to consumers.

32 (6)(a) The term also includes the sale of prewritten computer
33 software to a consumer, regardless of the method of delivery to the end
34 user. For purposes of this subsection (6)(a), the sale of prewritten
35 computer software includes the sale of or charge made for a key or an
36 enabling or activation code, where the key or code is required to
37 activate prewritten computer software and put the software into use.

1 There is no separate sale of the key or code from the prewritten
2 computer software, regardless of how the sale may be characterized by
3 the vendor or by the purchaser.

4 The term "retail sale" does not include the sale of or charge made
5 for:

- 6 (i) Custom software; or
- 7 (ii) The customization of prewritten computer software.

8 (b)(i) The term also includes the charge made to consumers for the
9 right to access and use prewritten computer software, where possession
10 of the software is maintained by the seller or a third party,
11 regardless of whether the charge for the service is on a per use, per
12 user, per license, subscription, or some other basis.

13 (ii)(A) The service described in (b)(i) of this subsection (6)
14 includes the right to access and use prewritten computer software to
15 perform data processing.

16 (B) For purposes of this subsection (6)(b)(ii), "data processing"
17 means the systematic performance of operations on data to extract the
18 required information in an appropriate form or to convert the data to
19 usable information. Data processing includes check processing, image
20 processing, form processing, survey processing, payroll processing,
21 claim processing, and similar activities.

22 (7) The term also includes the sale of or charge made for an
23 extended warranty to a consumer. For purposes of this subsection,
24 "extended warranty" means an agreement for a specified duration to
25 perform the replacement or repair of tangible personal property at no
26 additional charge or a reduced charge for tangible personal property,
27 labor, or both, or to provide indemnification for the replacement or
28 repair of tangible personal property, based on the occurrence of
29 specified events. The term "extended warranty" does not include an
30 agreement, otherwise meeting the definition of extended warranty in
31 this subsection, if no separate charge is made for the agreement and
32 the value of the agreement is included in the sales price of the
33 tangible personal property covered by the agreement. For purposes of
34 this subsection, "sales price" has the same meaning as in RCW
35 82.08.010.

36 (8)(a) The term also includes the following sales to consumers of
37 digital goods, digital codes, and digital automated services:

1 (i) Sales in which the seller has granted the purchaser the right
2 of permanent use;

3 (ii) Sales in which the seller has granted the purchaser a right of
4 use that is less than permanent;

5 (iii) Sales in which the purchaser is not obligated to make
6 continued payment as a condition of the sale; and

7 (iv) Sales in which the purchaser is obligated to make continued
8 payment as a condition of the sale.

9 (b) A retail sale of digital goods, digital codes, or digital
10 automated services under this subsection (8) includes any services
11 provided by the seller exclusively in connection with the digital
12 goods, digital codes, or digital automated services, whether or not a
13 separate charge is made for such services.

14 (c) For purposes of this subsection, "permanent" means perpetual or
15 for an indefinite or unspecified length of time. A right of permanent
16 use is presumed to have been granted unless the agreement between the
17 seller and the purchaser specifies or the circumstances surrounding the
18 transaction suggest or indicate that the right to use terminates on the
19 occurrence of a condition subsequent.

20 (9) The term also includes the charge made for providing tangible
21 personal property along with an operator for a fixed or indeterminate
22 period of time. A consideration of this is that the operator is
23 necessary for the tangible personal property to perform as designed.
24 For the purpose of this subsection (9), an operator must do more than
25 maintain, inspect, or set up the tangible personal property.

26 (10) The term does not include the sale of or charge made for labor
27 and services rendered in respect to the building, repairing, or
28 improving of any street, place, road, highway, easement, right-of-way,
29 mass public transportation terminal or parking facility, bridge,
30 tunnel, or trestle which is owned by a municipal corporation or
31 political subdivision of the state or by the United States and which is
32 used or to be used primarily for foot or vehicular traffic including
33 mass transportation vehicles of any kind.

34 (11) The term also does not include sales of chemical sprays or
35 washes to persons for the purpose of postharvest treatment of fruit for
36 the prevention of scald, fungus, mold, or decay, nor does it include
37 sales of feed, seed, seedlings, fertilizer, agents for enhanced
38 pollination including insects such as bees, and spray materials to:

1 (a) Persons who participate in the federal conservation reserve
2 program, the environmental quality incentives program, the wetlands
3 reserve program, and the wildlife habitat incentives program, or their
4 successors administered by the United States department of agriculture;
5 (b) farmers for the purpose of producing for sale any agricultural
6 product; and (c) farmers acting under cooperative habitat development
7 or access contracts with an organization exempt from federal income tax
8 under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or
9 the Washington state department of fish and wildlife to produce or
10 improve wildlife habitat on land that the farmer owns or leases.

11 (12) The term does not include the sale of or charge made for labor
12 and services rendered in respect to the constructing, repairing,
13 decorating, or improving of new or existing buildings or other
14 structures under, upon, or above real property of or for the United
15 States, any instrumentality thereof, or a county or city housing
16 authority created pursuant to chapter 35.82 RCW, including the
17 installing, or attaching of any article of tangible personal property
18 therein or thereto, whether or not such personal property becomes a
19 part of the realty by virtue of installation. Nor does the term
20 include the sale of services or charges made for the clearing of land
21 and the moving of earth of or for the United States, any
22 instrumentality thereof, or a county or city housing authority. Nor
23 does the term include the sale of services or charges made for cleaning
24 up for the United States, or its instrumentalities, radioactive waste
25 and other by-products of weapons production and nuclear research and
26 development.

27 (13) The term does not include the sale of or charge made for
28 labor, services, or tangible personal property pursuant to agreements
29 providing maintenance services for bus, rail, or rail fixed guideway
30 equipment when a regional transit authority is the recipient of the
31 labor, services, or tangible personal property, and a transit agency,
32 as defined in RCW 81.104.015, performs the labor or services.

33 (14) The term does not include the sale for resale of any service
34 described in this section if the sale would otherwise constitute a
35 "sale at retail" and "retail sale" under this section.

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