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**SUBSTITUTE HOUSE BILL 1353**

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**State of Washington**

**52nd Legislature**

**1991 Regular Session**

**By** House Committee on Commerce & Labor (originally sponsored by Representatives R. King, Jones and Cole; by request of Department of Labor & Industries).

Read first time February 22, 1991.

1       AN ACT Relating to industrial insurance coverage; amending RCW  
2 51.08.070, 51.08.180, 51.12.020, 51.12.100, and 51.12.110; adding a new  
3 section to chapter 51.08 RCW; and repealing RCW 51.12.115.

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

5       NEW SECTION.   **Sec. 1.** A new section is added to chapter 51.08 RCW  
6 to read as follows:

7       (1) "Employment," subject only to the provisions of this title,  
8 means personal service, of whatever nature, unlimited by the  
9 relationship of master and servant as known to the common law or any  
10 other legal relationship, including service in interstate commerce,  
11 performed for wages or under contract calling for the performance of  
12 personal services, written or oral, express or implied.

13       Except as expressly provided in this title, personal services are  
14 considered employment by the employer if the personal services are  
15 performed for an employing unit by one or more contractors or

1 subcontractors, acting individually or as a partnership, and do not  
2 meet the provisions of subsection (2) of this section. However, the  
3 contractor or subcontractor is an employer under this title with  
4 respect to personal services performed by individuals for the  
5 contractor or subcontractor.

6 (2) Services performed by an individual for remuneration shall be  
7 deemed to be employment subject to this title unless and until it is  
8 shown to the satisfaction of the department that:

9 (a) The individual has been and will continue to be free from  
10 control or direction over the performance of the service, both under  
11 the contract of service and in fact; and

12 (b) The service is either outside the usual course of business for  
13 which the service is performed, or the service is performed outside all  
14 of the places of business of the enterprise for which the service is  
15 performed; and

16 (c) The individual is customarily engaged in an independently  
17 established trade, occupation, profession, or business, of the same  
18 nature as that involved in the contract of service.

19 **Sec. 2.** RCW 51.08.070 and 1981 c 128 s 1 are each amended to read  
20 as follows:

21 "Employer" means any person, body of persons, corporate or  
22 otherwise, and the legal representatives of a deceased employer, all  
23 while engaged in this state in any work covered by the provisions of  
24 this title, by way of trade or business, or who contracts (~~(with one or~~  
25 ~~more workers, the essence of which is the personal labor of such worker~~  
26 ~~or workers)) or agrees to remunerate the services performed by an  
27 individual, as provided in section 1 of this act.~~

1 For the purposes of this title, a contractor registered under  
2 chapter 18.27 RCW or licensed under chapter 19.28 RCW is not an  
3 employer when:

4 (1) Contracting with any other person, firm, or corporation  
5 currently engaging in a business which is, at the time of signature of  
6 the contract and during all periods of performance, registered under  
7 chapter 18.27 RCW or licensed under chapter 19.28 RCW;

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

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

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

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

18 (b) The work of installing wires or equipment to convey electric  
19 current or installing apparatus to be operated by such current as it  
20 pertains to the electrical industry as described in chapter 19.28 RCW.

21 **Sec. 3.** RCW 51.08.180 and 1987 c 175 s 3 are each amended to read  
22 as follows:

23 (1) "Worker" means every person in this state who is engaged in the  
24 employment of an employer under this title, whether by way of manual  
25 labor or otherwise in the course of his or her employment; (~~also every~~  
26 ~~person in this state who is engaged in the employment of or who is~~  
27 ~~working under an independent contract, the essence of which is his or~~  
28 ~~her personal labor for an employer under this title, whether by way of~~  
29 ~~manual labor or otherwise, in the course of his or her employment)) and~~

1 includes all individuals who, for remuneration, perform any services,  
2 as provided in section 1 of this act, for any person, body of persons,  
3 corporate or otherwise, or the legal representative thereof: PROVIDED,  
4 That a person is not a worker for the purpose of this title, with  
5 respect to his or her activities attendant to operating a truck which  
6 he or she owns, and which is leased to a common or contract carrier.

7 (2) For the purposes of this title, any person, firm, or  
8 corporation currently engaging in a business which is registered under  
9 chapter 18.27 RCW or licensed under chapter 19.28 RCW is not a worker  
10 when:

11 (a) Contracting to perform (~~work~~) services for any other  
12 contractor registered under chapter 18.27 RCW or licensed under chapter  
13 19.28 RCW;

14 (b) The person, firm, or corporation has a principal place of  
15 business which would be eligible for a business deduction for internal  
16 revenue service tax purposes other than that furnished by the  
17 contractor for which the business has contracted to furnish services;

18 (c) The person, firm, or corporation maintains a separate set of  
19 books or records that reflect all items of income and expenses of the  
20 business; and

21 (d) The (~~work~~) service which the person, firm, or corporation has  
22 contracted to perform is:

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

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

27 (3) Any person, firm, or corporation registered under chapter 18.27  
28 RCW or licensed under chapter 19.28 RCW including those performing  
29 (~~work~~) services for any contractor registered under chapter 18.27 RCW  
30 or licensed under chapter 19.28 RCW is a worker when the contractor

1 ((supervises)) directs or controls, under the contract or in fact, the  
2 means by which the result is accomplished or the manner in which the  
3 ((work)) service is performed.

4 (4) For the purposes of this title, any person participating as a  
5 driver or back-up driver in commuter ride sharing, as defined in RCW  
6 46.74.010(1), is not a worker while driving a ride-sharing vehicle on  
7 behalf of the owner or lessee of the vehicle.

8 **Sec. 4.** RCW 51.12.020 and 1987 c 316 s 2 are each amended to read  
9 as follows:

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

12 (1) Any person employed as a domestic servant in a private home by  
13 an employer who has less than two employees regularly employed forty or  
14 more hours a week in such employment.

15 (2) Any person employed to do gardening, maintenance, repair,  
16 remodeling, or similar work in or about the private home of the  
17 employer.

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

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

23 (5) Sole proprietors or partners(~~(: PROVIDED, That after July 26,~~  
24 ~~1981, sole proprietors or partners who for the first time register~~  
25 ~~under chapter 18.27 RCW or become licensed for the first time under~~  
26 ~~chapter 19.28 RCW shall be included under the mandatory coverage~~  
27 ~~provisions of this title subject to the provisions of RCW 51.32.030.~~  
28 ~~These persons may elect to withdraw from coverage under RCW~~  
29 ~~51.12.115)).~~

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

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

6 (8)(a) Any bona fide executive officer of a corporation voluntarily  
7 elected and empowered in accordance with the articles of incorporation  
8 or bylaws of a corporation who at all times during the period involved  
9 is also a bona fide director, whose tenure is subject only to action by  
10 the board of directors, and who is also a shareholder of the  
11 corporation, holding not less than ten percent of all the issued and  
12 outstanding voting stock of the corporation. Only such executive  
13 officers who exercise substantial supervisory control in the daily  
14 management of the corporation and whose major responsibilities do not  
15 include the performance of manual labor, and whose annual compensation  
16 substantially exceeds the annual compensation of the corporation's  
17 highest paid worker, are included within this section.

18 (b) As used in this section, "executive" means the exercise of  
19 authority to define policy, to participate in the hiring and firing of  
20 employees, and to negotiate contracts on behalf of the corporation.

21 (c) Determinations respecting the status of persons performing  
22 services for a corporation shall be made, in part, by reference to  
23 Title 23B RCW and to compliance by the corporation with its own  
24 articles of incorporation and bylaws. For the purpose of determining  
25 coverage under this title, substance shall control over form, and  
26 mandatory coverage under this title shall extend to all workers of this  
27 state, regardless of honorary titles conferred upon those actually  
28 serving as workers.

1       (~~However, any~~) (d) A corporation may elect to cover ~~((such))~~  
2 officers who are ~~((in fact employees of the corporation))~~ exempted by  
3 this section in the manner provided by RCW 51.12.110.

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

11       **Sec. 5.** RCW 51.12.100 and 1988 c 271 s 2 are each amended to read  
12 as follows:

13       (1) The provisions of this title shall not apply to a master or  
14 member of a crew of any vessel, or to employers and workers for whom a  
15 right or obligation exists under the maritime laws or federal  
16 employees' compensation act for personal injuries or death of such  
17 workers.

18       (2) If an accurate segregation of payrolls of workers for whom such  
19 a right or obligation exists under the maritime laws cannot be made by  
20 the employer, the director is hereby authorized and directed to fix  
21 from time to time a basis for the approximate segregation of the  
22 payrolls of employees to cover the part of their work for which no  
23 right or obligation exists under the maritime laws for injuries or  
24 death occurring in such work, and the employer, if not a self-insurer,  
25 shall pay premiums on that basis for the time such workers are engaged  
26 in their work.

27       (3) Where two or more employers are simultaneously engaged in a  
28 common enterprise at one and the same site or place in maritime  
29 occupations under circumstances in which no right or obligation exists

1 under the maritime laws for personal injuries or death of such workers,  
2 such site or place shall be deemed for the purposes of this title to be  
3 the common plant of such employers.

4 (4) In the event payments are made under this title prior to the  
5 final determination under the maritime laws or federal employees'  
6 compensation act, such benefits shall be repaid by the worker or  
7 beneficiary if recovery is subsequently made under the maritime laws or  
8 federal employees' compensation act.

9 **Sec. 6.** RCW 51.12.110 and 1982 c 63 s 17 are each amended to read  
10 as follows:

11 Any employer who has in his or her employment any person or persons  
12 excluded from mandatory coverage pursuant to RCW 51.12.020 (~~((1), (2),~~  
13 ~~(3), (4), (6), (7), (8), or (9))~~) may file notice in writing with the  
14 director, on such forms as the department may provide, of his or her  
15 election to make such persons otherwise excluded subject to this title.  
16 The employer shall forthwith display in a conspicuous manner about his  
17 or her works, and in a sufficient number of places to reasonably inform  
18 his or her workers of the fact, printed notices furnished by the  
19 department stating that he or she has so elected. Said election shall  
20 become effective upon the filing of said notice in writing. The  
21 employer and his or her workers shall be subject to all the provisions  
22 of this title and entitled to all of the benefits thereof: PROVIDED,  
23 That those who have heretofore complied with the foregoing conditions  
24 and are carried and considered by the department as within the purview  
25 of this title shall be deemed and considered as having fully complied  
26 with its terms and shall be continued by the department as entitled to  
27 all of the benefits and subject to all of the liabilities without other  
28 or further action. Any employer who has complied with this section may  
29 withdraw his or her acceptance of liability under this title by filing

1 written notice with the director of the withdrawal of his or her  
2 acceptance. Such withdrawal shall become effective thirty days after  
3 the filing of such notice or on the date of the termination of the  
4 security for payment of compensation, whichever last occurs. The  
5 employer shall, at least thirty days before the effective date of the  
6 withdrawal, post reasonable notice of such withdrawal where the  
7 affected worker or workers work and shall otherwise notify personally  
8 the affected workers. Withdrawal of acceptance of this title shall not  
9 affect the liability of the department or self-insurer for compensation  
10 for any injury occurring during the period of acceptance.

11 The department shall have the power to cancel the elective adoption  
12 coverage if any required payments or reports have not been made.  
13 Cancellation by the department shall be no later than thirty days from  
14 the date of notice in writing by the department advising of  
15 cancellation being made.

16 NEW SECTION. **Sec. 7.** RCW 51.12.115 and 1981 c 128 s 5 are each  
17 repealed.