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SENATE BILL 5476

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State of Washington                      63rd Legislature                      2013 Regular Session

By Senators Hewitt, Keiser, Conway, and Holmquist Newbry

Read first time 01/31/13. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to the employment status of independent contractors  
2 in the news business; amending RCW 50.04.240 and 51.12.020; and  
3 reenacting and amending RCW 49.46.010.

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

5            **Sec. 1.** RCW 49.46.010 and 2011 1st sp.s. c 43 s 462 are each  
6 reenacted and amended to read as follows:

7            As used in this chapter:

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

9            (2) "Employ" includes to permit to work;

10           (3) "Employee" includes any individual employed by an employer but  
11 shall 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;

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, business,  
3 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 human resources director 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 or  
16 receives a nominal amount of compensation per unit of voluntary service  
17 rendered, an employer-employee relationship is deemed not to exist for  
18 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, or delivery person  
29 selling or distributing newspapers on the street, to offices, to  
30 businesses, or from house to house and any freelance news correspondent  
31 or "stringer" who, using his or her own equipment, chooses to submit  
32 material for publication for free or a fee when such material is  
33 published;

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

36 (h) Any individual engaged in forest protection and fire prevention  
37 activities;

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

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

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

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

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

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

21 (4) "Employer" includes any individual, partnership, association,  
22 corporation, business trust, or any person or group of persons acting  
23 directly or indirectly in the interest of an employer in relation to an  
24 employee;

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

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

32 (7) "Wage" means compensation due to an employee by reason of  
33 employment, payable in legal tender of the United States or checks on  
34 banks convertible into cash on demand at full face value, subject to  
35 such deductions, charges, or allowances as may be permitted by rules of  
36 the director.

1       **Sec. 2.** RCW 50.04.240 and 2007 c 218 s 85 are each amended to read  
2 as follows:

3       The term "employment" shall not include services ~~((as))~~ performed  
4 by a newspaper vendor, carrier, or delivery person selling or  
5 distributing newspapers on the street, to offices, to businesses, or  
6 from house to house and any freelance news correspondent or "stringer"  
7 who, using his or her own equipment, chooses to submit material for  
8 publication for free or a fee when such material is published.

9       **Sec. 3.** RCW 51.12.020 and 2009 c 162 s 33 are each amended to read  
10 as follows:

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

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

16       (2) Any person employed to do gardening, maintenance, or repair, in  
17 or about the private home of the employer. For the purposes of this  
18 subsection, "maintenance" means the work of keeping in proper  
19 condition, "repair" means to restore to sound condition after damage,  
20 and "private home" means a person's place of residence.

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

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

26       (5) Sole proprietors or partners.

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

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

32       (8)(a) Except as otherwise provided in (b) of this subsection, any  
33 bona fide officer of a corporation voluntarily elected or voluntarily  
34 appointed in accordance with the articles of incorporation or bylaws of  
35 the corporation, who at all times during the period involved is also a  
36 bona fide director, and who is also a shareholder of the corporation.  
37 Only such officers who exercise substantial control in the daily

1 management of the corporation and whose primary responsibilities do not  
2 include the performance of manual labor are included within this  
3 subsection.

4 (b) Alternatively, a corporation that is not a "public company" as  
5 defined in RCW 23B.01.400(~~(+24)~~) may exempt eight or fewer bona fide  
6 officers, who are voluntarily elected or voluntarily appointed in  
7 accordance with the articles of incorporation or bylaws of the  
8 corporation and who exercise substantial control in the daily  
9 management of the corporation, from coverage under this title without  
10 regard to the officers' performance of manual labor if the exempted  
11 officer is a shareholder of the corporation, or may exempt any number  
12 of officers if all the exempted officers are related by blood within  
13 the third degree or marriage. If a corporation that is not a "public  
14 company" elects to be covered under subsection (8)(a) of this section,  
15 the corporation's election must be made on a form prescribed by the  
16 department and under such reasonable rules as the department may adopt.

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

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

27 (9) Services rendered by a musician or entertainer under a contract  
28 with a purchaser of the services, for a specific engagement or  
29 engagements when such musician or entertainer performs no other duties  
30 for the purchaser and is not regularly and continuously employed by the  
31 purchaser. A purchaser does not include the leader of a group or  
32 recognized entity who employs other than on a casual basis musicians or  
33 entertainers.

34 (10) Services performed by a newspaper vendor, carrier, or delivery  
35 person selling or distributing newspapers on the street, to offices, to  
36 businesses, or from house to house and any freelance news correspondent  
37 or "stringer" who, using his or her own equipment, chooses to submit

1 material for publication for free or a fee when such material is  
2 published.

3 (11) Services performed by an insurance producer, as defined in RCW  
4 48.17.010(~~(+5)~~), or a surplus line broker licensed under chapter 48.15  
5 RCW.

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

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

9 (a) Management of the company is vested in its members, and the  
10 members for whom exemption is sought would qualify for exemption under  
11 subsection (5) of this section were the company a sole proprietorship  
12 or partnership; or

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

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