

1 5837-S.E AMH CL H2811.1

2 **ESSB 5837** - H COMM AMD **FAILED 4-19-91**

3 By Committee on Commerce & Labor

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5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 51.08 RCW
8 to read as follows:

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

15 Except as expressly provided in this title, personal services are
16 considered employment by the employer if the personal services are
17 performed for an employing unit by one or more contractors or
18 subcontractors, acting individually or as a partnership, and do not
19 meet the provisions of subsection (2) of this section. However, the
20 contractor or subcontractor is an employer under this title with
21 respect to personal services performed by individuals for the
22 contractor or subcontractor.

23 (2) Services performed by an individual in the course of employment
24 by an employer under this title, whether by way of manual labor or
25 otherwise, including all services performed by an individual for
26 remuneration constitute employment unless and until it is shown to the
27 satisfaction of the department that:

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

4 (b) The service is either outside the usual course of business for
5 which the service is performed, or the service is performed outside all
6 of the places of business of the enterprise for which the service is
7 performed, or the individual is responsible, both under the contract
8 and in fact, for the costs of the principal place of business from
9 which the service is performed; and

10 (c) The individual is customarily engaged in an independently
11 established trade, occupation, profession, or business, of the same
12 nature as that involved in the contract of service, or the individual
13 has a principal place of business for the business the individual is
14 conducting that is eligible for a business deduction for federal income
15 tax purposes; and

16 (d) The individual is filing a schedule of expenses with the
17 internal revenue service for the type of business the individual is
18 conducting; and

19 (e) The individual has established an account with the department
20 of revenue, and other state agencies as required by the particular
21 case, for the business the individual is conducting for the payment of
22 all state taxes normally paid by employers and businesses and has
23 registered for and received a unified business identifier number from
24 the state of Washington; and

25 (f) The individual maintains a separate set of books or records
26 that reflect all items of income and expenses of the business which the
27 individual is conducting.

28 "Sec. 2. RCW 51.08.070 and 1981 c 128 s 1 are each amended to read
29 as follows:

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

8 For the purposes of this title, a contractor registered under
9 chapter 18.27 RCW or licensed under chapter 19.28 RCW is not an
10 employer when:

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

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

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

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

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

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

28 "Sec. 3. RCW 51.08.180 and 1987 c 175 s 3 are each amended to read
29 as follows:

1 (1) "Worker" means every person in this state who is engaged in the
2 employment of an employer under this title, whether by way of manual
3 labor or otherwise in the course of his or her employment; (~~also every~~
4 ~~person in this state who is engaged in the employment of or who is~~
5 ~~working under an independent contract, the essence of which is his or~~
6 ~~her personal labor for an employer under this title, whether by way of~~
7 ~~manual labor or otherwise, in the course of his or her employment)) and
8 includes all individuals who, for remuneration, perform any services,
9 as provided in section 1 of this act, for any person, body of persons,
10 corporate or otherwise, or the legal representative thereof: PROVIDED,
11 That a person is not a worker for the purpose of this title, with
12 respect to his or her activities attendant to operating a truck which
13 he or she owns, and which is leased to a common or contract carrier.~~

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

18 (a) Contracting to perform (~~work~~) services for any other
19 contractor registered under chapter 18.27 RCW or licensed under chapter
20 19.28 RCW;

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

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

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

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

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

4 (3) Any person, firm, or corporation registered under chapter 18.27
5 RCW or licensed under chapter 19.28 RCW including those performing
6 (~~work~~) services for any contractor registered under chapter 18.27 RCW
7 or licensed under chapter 19.28 RCW is a worker when the contractor
8 (~~supervises~~) directs or controls, under the contract or in fact, the
9 means by which the result is accomplished or the manner in which the
10 (~~work~~) service is performed.

11 (4) For the purposes of this title, any person participating as a
12 driver or back-up driver in commuter ride sharing, as defined in RCW
13 46.74.010(1), is not a worker while driving a ride-sharing vehicle on
14 behalf of the owner or lessee of the vehicle."

15 "Sec. 4. RCW 51.12.020 and 1987 c 316 s 2 are each amended to read
16 as follows:

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

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

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

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

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

1 (5) Sole proprietors or partners(~~(: PROVIDED, That after July 26,~~
2 ~~1981, sole proprietors or partners who for the first time register~~
3 ~~under chapter 18.27 RCW or become licensed for the first time under~~
4 ~~chapter 19.28 RCW shall be included under the mandatory coverage~~
5 ~~provisions of this title subject to the provisions of RCW 51.32.030.~~
6 ~~These persons may elect to withdraw from coverage under RCW~~
7 ~~51.12.115)).~~

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

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

28 (c) Determinations respecting the status of persons performing
29 services for a corporation shall be made, in part, by reference to
30 Title 23B RCW and to compliance by the corporation with its own

1 articles of incorporation and bylaws. For the purpose of determining
2 coverage under this title, substance shall control over form, and
3 mandatory coverage under this title shall extend to all workers of this
4 state, regardless of honorary titles conferred upon those actually
5 serving as workers.

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

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

16 (10) Services performed by a newspaper carrier selling or
17 distributing newspapers on the street or from house to house.

18 (11) Services performed by an occasional employee of a professional
19 sports team who is performing the services only with respect to
20 regularly scheduled sports events.

21 (12) Services performed by an insurance agent, insurance broker, or
22 insurance solicitor, as defined in RCW 48.17.010, 48.17.020, and
23 48.17.030, respectively."

24 "Sec. 5. RCW 51.12.100 and 1988 c 271 s 2 are each amended to read
25 as follows:

26 (1) The provisions of this title shall not apply to a master or
27 member of a crew of any vessel, or to employers and workers for whom a
28 right or obligation exists under the maritime laws or federal

1 employees' compensation act for personal injuries or death of such
2 workers.

3 (2) If an accurate segregation of payrolls of workers for whom such
4 a right or obligation exists under the maritime laws cannot be made by
5 the employer, the director is hereby authorized and directed to fix
6 from time to time a basis for the approximate segregation of the
7 payrolls of employees to cover the part of their work for which no
8 right or obligation exists under the maritime laws for injuries or
9 death occurring in such work, and the employer, if not a self-insurer,
10 shall pay premiums on that basis for the time such workers are engaged
11 in their work.

12 (3) Where two or more employers are simultaneously engaged in a
13 common enterprise at one and the same site or place in maritime
14 occupations under circumstances in which no right or obligation exists
15 under the maritime laws for personal injuries or death of such workers,
16 such site or place shall be deemed for the purposes of this title to be
17 the common plant of such employers.

18 (4) In the event payments are made under this title prior to the
19 final determination under the maritime laws or federal employees'
20 compensation act, such benefits shall be repaid by the worker or
21 beneficiary if recovery is subsequently made under the maritime laws or
22 federal employees' compensation act."

23 "Sec. 6. RCW 51.12.110 and 1982 c 63 s 17 are each amended to read
24 as follows:

25 Any employer who has in his or her employment any person or persons
26 excluded from mandatory coverage pursuant to RCW 51.12.020 (~~((1), (2),~~
27 ~~(3), (4), (6), (7), (8), or (9))~~) may file notice in writing with the
28 director, on such forms as the department may provide, of his or her
29 election to make such persons otherwise excluded subject to this title.

1 The employer shall forthwith display in a conspicuous manner about his
2 or her works, and in a sufficient number of places to reasonably inform
3 his or her workers of the fact, printed notices furnished by the
4 department stating that he or she has so elected. Said election shall
5 become effective upon the filing of said notice in writing. The
6 employer and his or her workers shall be subject to all the provisions
7 of this title and entitled to all of the benefits thereof: PROVIDED,
8 That those who have heretofore complied with the foregoing conditions
9 and are carried and considered by the department as within the purview
10 of this title shall be deemed and considered as having fully complied
11 with its terms and shall be continued by the department as entitled to
12 all of the benefits and subject to all of the liabilities without other
13 or further action. Any employer who has complied with this section may
14 withdraw his or her acceptance of liability under this title by filing
15 written notice with the director of the withdrawal of his or her
16 acceptance. Such withdrawal shall become effective thirty days after
17 the filing of such notice or on the date of the termination of the
18 security for payment of compensation, whichever last occurs. The
19 employer shall, at least thirty days before the effective date of the
20 withdrawal, post reasonable notice of such withdrawal where the
21 affected worker or workers work and shall otherwise notify personally
22 the affected workers. Withdrawal of acceptance of this title shall not
23 affect the liability of the department or self-insurer for compensation
24 for any injury occurring during the period of acceptance.

25 The department shall have the power to cancel the elective adoption
26 coverage if any required payments or reports have not been made.
27 Cancellation by the department shall be no later than thirty days from
28 the date of notice in writing by the department advising of
29 cancellation being made."

1 **"Sec. 7.** RCW 50.04.140 and 1945 c 35 s 15 are each amended to read
2 as follows:

3 Services performed by an individual for remuneration shall be
4 deemed to be employment subject to this title unless and until it is
5 shown to the satisfaction of the commissioner that

6 (1) such individual has been and will continue to be free from
7 control or direction over the performance of such service, both under
8 his contract of service and in fact; and

9 (2) such service is either outside the usual course of business for
10 which such service is performed, or that such service is performed
11 outside of all the places of business of the enterprises for which such
12 service is performed, or the individual is responsible, both under the
13 contract and in fact, for the costs of the principal place of business
14 from which the service is performed; and

15 (3) such individual is customarily engaged in an independently
16 established trade, occupation, profession, or business, of the same
17 nature as that involved in the contract of service or such individual
18 has a principal place of business for the work the individual is
19 conducting that is eligible for a business deduction for federal income
20 tax purposes; and

21 (4) such individual is filing a schedule of expenses with the
22 internal revenue service for the type of business the individual is
23 conducting; and

24 (5) such individual has established an account with the department
25 of revenue, and other state agencies as required by the particular
26 case, for the business the individual is conducting for the payment of
27 all state taxes normally paid by employers and businesses and has
28 registered for and received a unified business identifier number from
29 the state of Washington; and

1 (6) such individual maintains a separate set of books or records
2 that reflect all items of income and expenses of the business which the
3 individual is conducting."

4 "NEW SECTION. Sec. 8. A new section is added to chapter 50.04 RCW
5 to read as follows:

6 The term "employment" shall not include services performed by an
7 occasional employee of a professional sports team who is performing the
8 services only with respect to regularly scheduled sports events."

9 "Sec. 9. RCW 50.04.230 and 1947 c 5 s 24 are each amended to read
10 as follows:

11 The term "employment" shall not include service performed by an
12 insurance agent, insurance broker, or insurance solicitor or a real
13 estate broker or a real estate salesman to the extent he or she is
14 compensated by commission and service performed by an investment
15 company agent or solicitor to the extent he or she is compensated by
16 commission(~~(, the [.~~ The)). The term "investment company", as used
17 in this (~~(subsection [section],)~~ section is to be construed as meaning
18 an investment company as defined in the act of congress entitled
19 "Investment Company Act of 1940.""

20 "NEW SECTION. Sec. 10. RCW 51.12.115 and 1981 c 128 s 5 are
21 each repealed."

22 **ESSB 5837** - H COMM AMD
23 By Committee on Commerce & Labor

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25 On page 1, line 1 of the title, after "employment;" strike the
26 remainder of the title and insert "amending RCW 51.08.070, 51.08.180,

1 51.12.020, 51.12.100, 51.12.110, 50.04.140, and 50.04.230; adding a new
2 section to chapter 51.08 RCW; adding a new section to chapter 50.04
3 RCW; and repealing RCW 51.12.115."