

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5837

Chapter 246, Laws of 1991

52nd Legislature
1991 Regular Session

UNEMPLOYMENT COMPENSATION--COVERED EMPLOYMENT--REVISED PROVISIONS

EFFECTIVE DATE: 1/1/92

Passed by the Senate April 23, 1991
Yeas 45 Nays 1

JOEL PRITCHARD
President of the Senate

Passed by the House April 19, 1991
Yeas 97 Nays 0

JOE KING
**Speaker of the
House of Representatives**

Approved May 17, 1991

BOOTH GARDNER
Governor of the State of Washington

CERTIFICATE

I, Gordon Golob, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5837** as passed by the Senate and the House of Representatives on the dates hereon set forth.

GORDON A. GOLOB
Secretary

FILED

May 17, 1991 - 10:18 a.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5837

AS AMENDED BY THE HOUSE

Passed Legislature - 1991 Regular Session

State of Washington 52nd Legislature 1991 Regular Session

By Senate Committee on Commerce & Labor (originally sponsored by Senators Anderson, Owen, Snyder and Matson).

Read first time March 6, 1991.

1 AN ACT Relating to employment; amending RCW 51.08.070, 51.08.180,
2 51.12.020, 51.12.110, 50.04.140, and 50.04.230; adding a new section to
3 chapter 51.08 RCW; repealing RCW 51.12.115; creating a new section; and
4 providing an effective date.

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

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

8 As a separate alternative to the definition of "employer" under
9 section 2 of this act and the definition of "worker" under section 3 of
10 this act, services performed by an individual for remuneration shall
11 not constitute employment subject to this title if it is shown that:

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

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

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

13 (4) On the effective date of the contract of service, the
14 individual is responsible for filing at the next applicable filing
15 period, both under the contract of service and in fact, a schedule of
16 expenses with the internal revenue service for the type of business the
17 individual is conducting; and

18 (5) On the effective date of the contract of service, or within a
19 reasonable period after the effective date of the contract, the
20 individual has established an account with the department of revenue,
21 and other state agencies as required by the particular case, for the
22 business the individual is conducting for the payment of all state
23 taxes normally paid by employers and businesses and has registered for
24 and received a unified business identifier number from the state of
25 Washington; and

26 (6) On the effective date of the contract of service, the
27 individual is maintaining a separate set of books or records that
28 reflect all items of income and expenses of the business which the
29 individual is conducting.

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

3 "Employer" means any person, body of persons, corporate or
4 otherwise, and the legal representatives of a deceased employer, all
5 while engaged in this state in any work covered by the provisions of
6 this title, by way of trade or business, or who contracts with one or
7 more workers, the essence of which is the personal labor of such worker
8 or workers. Or as a separate alternative, persons or entities are not
9 employers when they contract or agree to remunerate the services
10 performed by an individual who meets the tests set forth in subsections
11 (1) through (6) of section 1 of this act.

12 For the purposes of this title, a contractor registered under
13 chapter 18.27 RCW or licensed under chapter 19.28 RCW is not an
14 employer when:

15 (1) Contracting with any other person, firm, or corporation
16 currently engaging in a business which is registered under chapter
17 18.27 RCW or licensed under chapter 19.28 RCW;

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

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

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

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

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

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

3 (1) "Worker" means every person in this state who is engaged in the
4 employment of an employer under this title, whether by way of manual
5 labor or otherwise in the course of his or her employment; also every
6 person in this state who is engaged in the employment of or who is
7 working under an independent contract, the essence of which is his or
8 her personal labor for an employer under this title, whether by way of
9 manual labor or otherwise, in the course of his or her employment, or
10 as a separate alternative, a person is not a worker if he or she meets
11 the tests set forth in subsections (1) through (6) of section 1 of this
12 act: PROVIDED, That a person is not a worker for the purpose of this
13 title, with respect to his or her activities attendant to operating a
14 truck which he or she owns, and which is leased to a common or contract
15 carrier.

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

20 (a) Contracting to perform work for any contractor registered under
21 chapter 18.27 RCW or licensed under chapter 19.28 RCW;

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

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

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

1 (i) The work of a contractor as defined in RCW 18.27.010; or
2 (ii) The work of installing wires or equipment to convey electric
3 current or installing apparatus to be operated by such current as it
4 pertains to the electrical industry as described in chapter 19.28 RCW.

5 (3) Any person, firm, or corporation registered under chapter 18.27
6 RCW or licensed under chapter 19.28 RCW including those performing work
7 for any contractor registered under chapter 18.27 RCW or licensed under
8 chapter 19.28 RCW is a worker when the contractor supervises or
9 controls the means by which the result is accomplished or the manner in
10 which the work 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 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, any
14 bona fide officer of a corporation voluntarily elected ((and
15 empowered)) or voluntarily appointed in accordance with the articles of
16 incorporation or bylaws of ((a) the corporation, who at all times
17 during the period involved is also a bona fide director, and who is
18 also a 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 manual
21 labor are included within this subsection.

22 (b) Alternatively, a corporation that is not a "public company" as
23 defined in RCW 23B.01.400(19) 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

1 the third degree or marriage. If a corporation that is not a "public
2 company" elects to be covered under subsection (8)(a) of this section,
3 the corporation's election must be made on a form prescribed by the
4 department and under such reasonable rules as the department may adopt.

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

13 ((However, any)) (d) A corporation may elect to cover ((such))
14 officers who are ((in fact employees of the corporation)) exempted by
15 this subsection in the manner provided by RCW 51.12.110.

16 (9) Services rendered by a musician or entertainer under a contract
17 with a purchaser of the services, for a specific engagement or
18 engagements when such musician or entertainer performs no other duties
19 for the purchaser and is not regularly and continuously employed by the
20 purchaser. A purchaser does not include the leader of a group or
21 recognized entity who employs other than on a casual basis musicians or
22 entertainers.

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

25 (11) Services performed by an insurance agent, insurance broker, or
26 insurance solicitor, as defined in RCW 48.17.010, 48.17.020, and
27 48.17.030, respectively.

28 **Sec. 5.** RCW 51.12.110 and 1982 c 63 s 17 are each amended to read
29 as follows:

1 Any employer who has in his or her employment any person or persons
2 excluded from mandatory coverage pursuant to RCW 51.12.020 (~~((1), (2),~~
3 ~~(3), (4), (6), (7), (8), or (9))~~) may file notice in writing with the
4 director, on such forms as the department may provide, of his or her
5 election to make such persons otherwise excluded subject to this title.
6 The employer shall forthwith display in a conspicuous manner about his
7 or her works, and in a sufficient number of places to reasonably inform
8 his or her workers of the fact, printed notices furnished by the
9 department stating that he or she has so elected. Said election shall
10 become effective upon the filing of said notice in writing. The
11 employer and his or her workers shall be subject to all the provisions
12 of this title and entitled to all of the benefits thereof: PROVIDED,
13 That those who have heretofore complied with the foregoing conditions
14 and are carried and considered by the department as within the purview
15 of this title shall be deemed and considered as having fully complied
16 with its terms and shall be continued by the department as entitled to
17 all of the benefits and subject to all of the liabilities without other
18 or further action. Any employer who has complied with this section may
19 withdraw his or her acceptance of liability under this title by filing
20 written notice with the director of the withdrawal of his or her
21 acceptance. Such withdrawal shall become effective thirty days after
22 the filing of such notice or on the date of the termination of the
23 security for payment of compensation, whichever last occurs. The
24 employer shall, at least thirty days before the effective date of the
25 withdrawal, post reasonable notice of such withdrawal where the
26 affected worker or workers work and shall otherwise notify personally
27 the affected workers. Withdrawal of acceptance of this title shall not
28 affect the liability of the department or self-insurer for compensation
29 for any injury occurring during the period of acceptance.

1 The department shall have the power to cancel the elective adoption
2 coverage if any required payments or reports have not been made.
3 Cancellation by the department shall be no later than thirty days from
4 the date of notice in writing by the department advising of
5 cancellation being made.

6 **Sec. 6.** RCW 50.04.140 and 1945 c 35 s 15 are each amended to read
7 as follows:

8 Services performed by an individual for remuneration shall be
9 deemed to be employment subject to this title unless and until it is
10 shown to the satisfaction of the commissioner that:

11 (1)(a) Such individual has been and will continue to be free from
12 control or direction over the performance of such service, both under
13 his or her contract of service and in fact; and

14 ((+2)) (b) Such service is either outside the usual course of
15 business for which such service is performed, or that such service is
16 performed outside of all the places of business of the enterprises for
17 which such service is performed; and

18 ((+3)) (c) Such individual is customarily engaged in an
19 independently established trade, occupation, profession, or business,
20 of the same nature as that involved in the contract of service.

21 (2) Or as a separate alternative, it shall not constitute
22 employment subject to this title if it is shown that:

23 (a) Such individual has been and will continue to be free from
24 control or direction over the performance of such service, both under
25 his or her contract of service and in fact; and

26 (b) Such service is either outside the usual course of business for
27 which such service is performed, or that such service is performed
28 outside of all the places of business of the enterprises for which such
29 service is performed, or the individual is responsible, both under the

1 contract and in fact, for the costs of the principal place of business
2 from which the service is performed; and

3 (c) Such individual is customarily engaged in an independently
4 established trade, occupation, profession, or business, of the same
5 nature as that involved in the contract of service, or such individual
6 has a principal place of business for the work the individual is
7 conducting that is eligible for a business deduction for federal income
8 tax purposes; and

9 (d) On the effective date of the contract of service, such
10 individual is responsible for filing at the next applicable filing
11 period, both under the contract of service and in fact, a schedule of
12 expenses with the internal revenue service for the type of business the
13 individual is conducting; and

14 (e) On the effective date of the contract of service, or within a
15 reasonable period after the effective date of the contract, such
16 individual has established an account with the department of revenue,
17 and other state agencies as required by the particular case, for the
18 business the individual is conducting for the payment of all state
19 taxes normally paid by employers and businesses and has registered for
20 and received a unified business identifier number from the state of
21 Washington; and

22 (f) On the effective date of the contract of service, such
23 individual is maintaining a separate set of books or records that
24 reflect all items of income and expenses of the business which the
25 individual is conducting."

26 **Sec. 7.** RCW 50.04.230 and 1947 c 5 s 24 are each amended to read
27 as follows:

28 The term "employment" shall not include service performed by an
29 insurance agent, insurance broker, or insurance solicitor or a real

1 estate broker or a real estate salesman to the extent he or she is
2 compensated by commission and service performed by an investment
3 company agent or solicitor to the extent he or she is compensated by
4 commission(~~(, the [The])~~). The term "investment company", as used
5 in this (~~(subsection [section],)~~) section is to be construed as meaning
6 an investment company as defined in the act of congress entitled
7 "Investment Company Act of 1940."

8 NEW SECTION. Sec. 8. RCW 51.12.115 and 1981 c 128 s 5 are
9 each repealed.

10 NEW SECTION. Sec. 9. If any part of this act is found to be
11 in conflict with federal requirements which are a prescribed condition
12 to the allocation of federal funds to the state or the eligibility of
13 employers in this state for federal unemployment tax credits, the
14 conflicting part of this act is hereby declared to be inoperative
15 solely to the extent of the conflict, and such finding or determination
16 shall not affect the operation of the remainder of this act. The rules
17 under this act shall meet federal requirements which are a necessary
18 condition to the receipt of federal funds by the state or the granting
19 of federal unemployment tax credits to employers in this state.

20 NEW SECTION. Sec. 10. This act shall take effect January 1,
21 1992.

Passed the Senate April 23, 1991.
Passed the House April 19, 1991.
Approved by the Governor May 17, 1991.
Filed in Office of Secretary of State May 17, 1991.