
SUBSTITUTE SENATE BILL 5721

State of Washington

56th Legislature

1999 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Heavey and McCaslin)

Read first time 02/25/1999.

1 AN ACT Relating to workers' compensation coverage for a member or
2 manager of a limited liability company; and amending RCW 51.12.020.

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

4 **Sec. 1.** RCW 51.12.020 and 1997 c 314 s 18 are each amended to read
5 as follows:

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

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

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

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

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

3 (5) Sole proprietors or partners.

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

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

9 (8)(a) Except as otherwise provided in (b) of this subsection, any
10 bona fide officer of a corporation voluntarily elected or voluntarily
11 appointed in accordance with the articles of incorporation or bylaws of
12 the corporation, who at all times during the period involved is also a
13 bona fide director, and who is also a shareholder of the corporation.
14 Only such officers who exercise substantial control in the daily
15 management of the corporation and whose primary responsibilities do not
16 include the performance of manual labor are included within this
17 subsection.

18 (b) Alternatively, a corporation that is not a "public company" as
19 defined in RCW 23B.01.400(~~(+20)~~) (21) may exempt eight or fewer bona
20 fide officers, who are voluntarily elected or voluntarily appointed in
21 accordance with the articles of incorporation or bylaws of the
22 corporation and who exercise substantial control in the daily
23 management of the corporation, from coverage under this title without
24 regard to the officers' performance of manual labor if the exempted
25 officer is a shareholder of the corporation, or may exempt any number
26 of officers if all the exempted officers are related by blood within
27 the third degree or marriage. If a corporation that is not a "public
28 company" elects to be covered under subsection (8)(a) of this section,
29 the corporation's election must be made on a form prescribed by the
30 department and under such reasonable rules as the department may adopt.

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

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

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

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

12 (11) Services performed by an insurance agent, insurance broker, or
13 insurance solicitor, as defined in RCW 48.17.010, 48.17.020, and
14 48.17.030, respectively.

15 (12) Services performed by a booth renter as defined in RCW
16 18.16.020. However, a person exempted under this subsection may elect
17 coverage under RCW 51.32.030.

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

19 (a) Management of the company is vested in its members and the
20 members for whom exemption is sought would qualify for exemption under
21 subsection (5) of this section if the company was a sole proprietorship
22 or partnership; or

23 (b) Management of the company is vested in one or more managers,
24 and the members for whom exemption is sought are managers who would
25 qualify for exemption under subsection (8) of this section if the
26 company was a corporation.

--- END ---