
SUBSTITUTE HOUSE BILL 2147

State of Washington 63rd Legislature 2014 Regular Session

By House Labor & Workforce Development (originally sponsored by Representatives Condotta and Buys)

READ FIRST TIME 02/05/14.

1 AN ACT Relating to a voluntary independent contractor
2 certification; amending RCW 51.08.070, 51.08.180, 39.12.100, 49.46.010,
3 and 82.04.360; adding new sections to chapter 51.12 RCW; adding a new
4 section to chapter 51.44 RCW; adding a new section to chapter 50.04
5 RCW; creating new sections; and prescribing penalties.

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

7 NEW SECTION. **Sec. 1.** (1) Beginning September 1, 2014, a person
8 who regularly and customarily performs services at a location other
9 than the person's own fixed business location may apply for an
10 independent contractor exemption certificate.

11 (2) To obtain an independent contractor exemption certificate, an
12 applicant must submit an application under oath on a form prescribed by
13 the department and containing the following:

- 14 (a) The applicant's name, address, and social security number;
15 (b) Each trade, occupation, business, or profession for which the
16 applicant is seeking certification;
17 (c) A statement that the applicant:
18 (i) Has been and will continue to be free from direction or control

1 over the performance of the applicant's own services, both under
2 contract and in fact; and

3 (ii) Is engaged in an independently established trade, occupation,
4 business, or profession;

5 (d) The following documentation that the applicant has an
6 independently established trade, occupation, business, or profession:

7 (i) An active and valid account with the department of revenue;

8 (ii) Any active and valid license, registration, or certificate,
9 including any insurance and bonding, required by the state for the
10 trade, occupation, business, or profession; and

11 (iii) Registration with the secretary of state, if required for the
12 particular trade, occupation, business, or profession;

13 (e) A statement that the applicant understands that he or she is
14 not eligible for benefits under this title while working under an
15 approved independent contractor exemption certificate unless the
16 applicant elects coverage; and

17 (f) A fee of not more than one hundred twenty-five dollars.

18 (3) The department must approve an independent contractor exemption
19 certificate if the applicant meets the requirements of this section.

20 (4) An approved independent contractor exemption certificate
21 remains active and valid for two years unless it is:

22 (a) Suspended or revoked under section 3 of this act; or

23 (b) Canceled by the holder of the certificate.

24 (5) A holder of an active and valid independent contractor
25 exemption certificate who applies for renewal of the certificate is
26 presumed to meet the requirements of this section. The renewal fee
27 must be not more than one hundred twenty-five dollars.

28 (6) The holder of an independent contractor exemption certificate
29 that has been revoked under section 3 of this act or who has been found
30 in violation of section 4 of this act may not reapply for a certificate
31 for two years from the date of revocation or finding of a violation.

32 (7) If the department denies an initial or renewal application for
33 an independent contractor exemption certificate, the applicant may
34 appeal the denial to the board of industrial insurance appeals under
35 chapter 51.52 RCW.

36 (8) A person who holds an independent contractor exemption
37 certificate may elect to be covered under this title in accordance with
38 RCW 51.32.030.

1 NEW SECTION. **Sec. 2.** (1) A holder of an active and valid
2 independent contractor exemption certificate who is working under the
3 certificate is conclusively presumed to be an independent contractor
4 and not a worker covered under this title.

5 (2) A person is working under an independent contractor exemption
6 certificate if:

7 (a) The person is performing work in the trade, occupation,
8 business, or profession listed on the certificate; and

9 (b) The employer and the certificate holder do not have a written
10 agreement described in subsection (3) of this section that the
11 certificate holder's status with respect to that employer is as a
12 worker.

13 (3) For a certificate holder working in the trade, occupation,
14 business, or profession listed on the certificate to be a worker, the
15 holder and the entity engaging the certificate holder must file an
16 agreement with the department at the time and in the form prescribed by
17 the department.

18 (4) The decision of the department, subject to appeal, is
19 determinative as to whether a person is working under an active and
20 valid independent contractor exemption certificate for the purposes of
21 this title and RCW 39.12.100, 49.46.010, 82.04.360, and section 10 of
22 this act.

23 NEW SECTION. **Sec. 3.** (1) The department may suspend an
24 independent contractor exemption certificate for a specific business
25 relationship if the department determines that the entity engaging the
26 certificate holder exerts or retains a right to control to a degree
27 that causes the certificate holder to violate section 1(2)(c)(i) of
28 this act.

29 (2) The department may revoke an independent contractor exemption
30 certificate if it finds that the certificate holder:

31 (a) Made misrepresentations in the application or renewal form;

32 (b) Altered or amended the application or renewal form, supporting
33 documentation, or the independent contractor exemption certificate;

34 (c) Failed to cooperate with the department in providing
35 information relevant to the continued validity of the holder's
36 certificate; or

1 (d) Does not have an independently established trade, occupation,
2 business, or profession as required under section 1(2)(c)(ii) of this
3 act.

4 (3) A decision by the department to suspend or revoke an
5 independent contractor exemption certificate takes effect upon issuance
6 of the decision, subject to appeal. A suspension or revocation of the
7 certificate does not invalidate the holder's ineligibility for benefits
8 under this title for the period prior to the notice to the holder of
9 the department's decision to suspend or revoke the certificate.

10 (4) The department's decision to suspend or revoke an independent
11 contractor exemption certificate may be appealed under chapter 51.52
12 RCW.

13 NEW SECTION. **Sec. 4.** (1) A person may not:

14 (a) Transfer to another person or allow another person to use an
15 independent contractor exemption certificate;

16 (b) Alter or falsify an independent contractor exemption
17 certificate; or

18 (c) Misrepresent the person's status as the holder of an
19 independent contractor exemption certificate.

20 (2) An employer may not:

21 (a) Require a person through coercion, misrepresentation, or
22 fraudulent means to apply for an independent contractor exemption
23 certificate to avoid the employer's obligations under this title; or

24 (b) Exert control to a degree that causes the holder of an
25 independent contractor exemption certificate to violate section
26 1(2)(c)(i) of this act.

27 (3) In addition to any other penalty provided under this title, a
28 person or employer who violates this section is subject to a fine of up
29 to one thousand dollars for each violation.

30 (4) A person or employer may appeal a fine under chapter 51.52 RCW.

31 **Sec. 5.** RCW 51.08.070 and 2008 c 102 s 2 are each amended to read
32 as follows:

33 "Employer" means any person, body of persons, corporate or
34 otherwise, and the legal representatives of a deceased employer, all
35 while engaged in this state in any work covered by the provisions of
36 this title, by way of trade or business, or who contracts with one or

1 more workers, the essence of which is the personal labor of such worker
2 or workers. Or as an exception to the definition of employer, persons
3 or entities are not employers when they contract or agree to remunerate
4 the services performed by an individual who:

5 (1) Meets the tests set forth in ((~~subsections (1) through (6) of~~))
6 RCW 51.08.195 (1) through (6) or the separate tests set forth in RCW
7 51.08.181 for work performed that requires registration under chapter
8 18.27 RCW or licensing under chapter 19.28 RCW; or

9 (2) Is working under an active and valid independent contractor
10 exemption certificate.

11 **Sec. 6.** RCW 51.08.180 and 2008 c 102 s 3 are each amended to read
12 as follows:

13 (1) "Worker" means every person in this state who is engaged in the
14 employment of an employer under this title, whether by way of manual
15 labor or otherwise in the course of his or her employment; also every
16 person in this state who is engaged in the employment of or who is
17 working under an independent contract, the essence of which is his or
18 her personal labor for an employer under this title, whether by way of
19 manual labor or otherwise, in the course of his or her employment, or
20 as an exception to the definition of worker, a person is not a worker
21 if he or she:

22 (a) Meets the tests set forth in ((~~subsections (1) through (6) of~~))
23 RCW 51.08.195 (1) through (6) or the separate tests set forth in RCW
24 51.08.181 for work performed that requires registration under chapter
25 18.27 RCW or licensing under chapter 19.28 RCW(~~(:—PROVIDED, That))~~); or

26 (b) Is working under an active and valid independent contractor
27 exemption certificate.

28 (2) A person is not a worker for the purpose of this title, with
29 respect to his or her activities attendant to operating a truck which
30 he or she owns, and which is leased to a common or contract carrier.

31 NEW SECTION. **Sec. 7.** A new section is added to chapter 51.44 RCW
32 to read as follows:

33 The independent contractor exemption certificate account is created
34 in the state treasury. All receipts from fees under section 1 of this
35 act and fines under section 4 of this act must be deposited into the

1 account. Moneys in the account may be spent only after appropriation.
2 Expenditures from the account may be used only for purposes of the
3 independent contractor exemption certificate program.

4 **Sec. 8.** RCW 39.12.100 and 2009 c 63 s 1 are each amended to read
5 as follows:

6 For the purposes of this chapter, an individual employed on a
7 public works project is not considered to be a laborer, worker, or
8 mechanic when:

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

12 ((+2)) (b) The service is either outside the usual course of
13 business for the contractor or contractors for whom the individual
14 performs services, or the service is performed outside all of the
15 places of business of the enterprise for which the individual performs
16 services, or the individual is responsible, both under the contract and
17 in fact, for the costs of the principal place of business from which
18 the service is performed;

19 ((+3)) (c) The individual is customarily engaged in an
20 independently established trade, occupation, profession, or business,
21 of the same nature as that involved in the contract of service, or the
22 individual has a principal place of business for the business the
23 individual is conducting that is eligible for a business deduction for
24 federal income tax purposes other than that furnished by the employer
25 for which the business has contracted to furnish services;

26 ((+4)) (d) On the effective date of the contract of service, the
27 individual is responsible for filing at the next applicable filing
28 period, both under the contract of service and in fact, a schedule of
29 expenses with the internal revenue service for the type of business the
30 individual is conducting;

31 ((+5)) (e) On the effective date of the contract of service, or
32 within a reasonable period after the effective date of the contract of
33 service, the individual has an active and valid certificate of
34 registration with the department of revenue, and an active and valid
35 account with any other state agencies as required by the particular
36 case, for the business the individual is conducting for the payment of

1 all state taxes normally paid by employers and businesses and has
2 registered for and received a unified business identifier number from
3 the state of Washington;

4 ~~((+6))~~ (f) On the effective date of the contract of service, the
5 individual is maintaining a separate set of books or records that
6 reflect all items of income and expenses of the business which the
7 individual is conducting; and

8 ~~((+7))~~ (g) On the effective date of the contract of service, if
9 the nature of the work performed requires registration under chapter
10 18.27 RCW or licensure under chapter 19.28 RCW, the individual has a
11 valid contractor registration pursuant to chapter 18.27 RCW or an
12 electrical contractor license pursuant to chapter 19.28 RCW; or

13 (2) The individual is working under an active and valid independent
14 contractor exemption certificate approved by the department of labor
15 and industries.

16 **Sec. 9.** RCW 49.46.010 and 2013 c 141 s 1 are each amended to read
17 as follows:

18 As used in this chapter:

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

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

21 (3) "Employee" includes any individual employed by an employer, but
22 shall not include:

23 (a) Any individual (i) employed as a hand harvest laborer and paid
24 on a piece rate basis in an operation which has been, and is generally
25 and customarily recognized as having been, paid on a piece rate basis
26 in the region of employment; (ii) who commutes daily from his or her
27 permanent residence to the farm on which he or she is employed; and
28 (iii) who has been employed in agriculture less than thirteen weeks
29 during the preceding calendar year;

30 (b) Any individual employed in casual labor in or about a private
31 home, unless performed in the course of the employer's trade, business,
32 or profession;

33 (c) Any individual employed in a bona fide executive,
34 administrative, or professional capacity or in the capacity of outside
35 salesperson as those terms are defined and delimited by rules of the
36 director. However, those terms shall be defined and delimited by the

1 human resources director pursuant to chapter 41.06 RCW for employees
2 employed under the director of personnel's jurisdiction;

3 (d) Any individual engaged in the activities of an educational,
4 charitable, religious, state or local governmental body or agency, or
5 nonprofit organization where the employer-employee relationship does
6 not in fact exist or where the services are rendered to such
7 organizations gratuitously. If the individual receives reimbursement
8 in lieu of compensation for normally incurred out-of-pocket expenses or
9 receives a nominal amount of compensation per unit of voluntary service
10 rendered, an employer-employee relationship is deemed not to exist for
11 the purpose of this section or for purposes of membership or
12 qualification in any state, local government, or publicly supported
13 retirement system other than that provided under chapter 41.24 RCW;

14 (e) Any individual employed full time by any state or local
15 governmental body or agency who provides voluntary services but only
16 with regard to the provision of the voluntary services. The voluntary
17 services and any compensation therefor shall not affect or add to
18 qualification, entitlement, or benefit rights under any state, local
19 government, or publicly supported retirement system other than that
20 provided under chapter 41.24 RCW;

21 (f) Any newspaper vendor, carrier, or delivery person selling or
22 distributing newspapers on the street, to offices, to businesses, or
23 from house to house and any freelance news correspondent or "stringer"
24 who, using his or her own equipment, chooses to submit material for
25 publication for free or a fee when such material is published;

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

28 (h) Any individual engaged in forest protection and fire prevention
29 activities;

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

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

1 (k) Any resident, inmate, or patient of a state, county, or
2 municipal correctional, detention, treatment or rehabilitative
3 institution;

4 (l) Any individual who holds a public elective or appointive office
5 of the state, any county, city, town, municipal corporation or quasi
6 municipal corporation, political subdivision, or any instrumentality
7 thereof, or any employee of the state legislature;

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

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

12 (o) Any individual working under an active and valid independent
13 contractor exemption certificate approved by the department of labor
14 and industries;

15 (4) "Employer" includes any individual, partnership, association,
16 corporation, business trust, or any person or group of persons acting
17 directly or indirectly in the interest of an employer in relation to an
18 employee;

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

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

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

31 NEW SECTION. Sec. 10. A new section is added to chapter 50.04 RCW
32 to read as follows:

33 Except for services subject to RCW 50.44.010, 50.44.020, 50.44.030,
34 or 50.50.010, and notwithstanding RCW 50.04.140 and 50.04.145,
35 "employment" does not include services performed by a person working
36 under an active and valid independent contractor exemption certificate
37 approved by the department of labor and industries.

1 **Sec. 11.** RCW 82.04.360 and 2010 1st sp.s. c 23 s 702 are each
2 amended to read as follows:

3 (1) This chapter does not apply to any person in respect to his or
4 her employment in the capacity of an employee or servant as
5 distinguished from that of an independent contractor. For the purposes
6 of this section, the definition of employee includes those persons that
7 are defined in section 3121(d)(3)(B) of the federal internal revenue
8 code of 1986, as amended through January 1, 1991.

9 (2) Until July 1, 2010, this chapter does not apply to amounts
10 received by an individual from a corporation as compensation for
11 serving as a member of that corporation's board of directors.
12 Beginning on July 1, 2010, such amounts are taxable under RCW
13 82.04.290(2).

14 (3) A booth renter is an independent contractor for purposes of
15 this chapter. For purposes of this section, "booth renter" means any
16 person who:

17 (a) Performs cosmetology, barbering, esthetics, or manicuring
18 services for which a license is required under chapter 18.16 RCW; and

19 (b) Pays a fee for the use of salon or shop facilities and receives
20 no compensation or other consideration from the owner of the salon or
21 shop for the services performed.

22 (4) A person working under an active and valid independent
23 contractor exemption certificate approved by the department of labor
24 and industries is an independent contractor for purposes of this
25 section.

26 NEW SECTION. **Sec. 12.** The department shall maintain on its web
27 site a searchable database of holders of independent contractor
28 exemption certificates and the trade, occupation, business, or
29 profession listed on each certificate.

30 NEW SECTION. **Sec. 13.** The department of labor and industries may
31 adopt rules to implement sections 1 through 4 of this act.

32 NEW SECTION. **Sec. 14.** Sections 1 through 4 of this act may be
33 known and cited as the independent contractor certification act.

1 NEW SECTION. **Sec. 15.** Sections 1 through 4 and 12 of this act are
2 each added to chapter 51.12 RCW.

3 NEW SECTION. **Sec. 16.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 17.** If any part of this act is found to be in
8 conflict with federal requirements that are a prescribed condition to
9 the allocation of federal funds to the state or the eligibility of
10 employers in this state for federal unemployment tax credits, the
11 conflicting part of this act is inoperative solely to the extent of the
12 conflict, and the finding or determination does not affect the
13 operation of the remainder of this act. Rules adopted under this act
14 must meet federal requirements that are a necessary condition to the
15 receipt of federal funds by the state or the granting of federal
16 unemployment tax credits to employers in this state.

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