
HOUSE BILL 2147

State of Washington

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By Representatives Condotta and Buys

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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) An individual is working under an independent contractor
6 exemption certificate if:

7 (a) The individual 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 or oral agreement that the certificate holder's status with respect to
11 that employer is as a worker.

12 (3) The decision of the department, subject to appeal, is
13 determinative as to whether a person is working under an active and
14 valid independent contractor exemption certificate for the purposes of
15 this title and RCW 39.12.100, 49.46.010, 82.04.360, and section 10 of
16 this act.

17 NEW SECTION. **Sec. 3.** (1) The department may suspend an
18 independent contractor exemption certificate for a specific business
19 relationship if the department determines that the entity engaging the
20 certificate holder exerts or retains a right to control to a degree
21 that causes the certificate holder to violate section 1(2)(c)(i) of
22 this act.

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

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

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

28 (c) Failed to cooperate with the department in providing
29 information relevant to the continued validity of the holder's
30 certificate; or

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

34 (3) A decision by the department to suspend or revoke an
35 independent contractor exemption certificate takes effect upon issuance
36 of the decision, subject to appeal. A suspension or revocation of the

1 certificate does not invalidate the holder's ineligibility for benefits
2 under this title for the period prior to the notice to the holder of
3 the department's decision to suspend or revoke the certificate.

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

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

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

10 (b) Alter or falsify an independent contractor exemption
11 certificate; or

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

14 (2) An employer may not:

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

18 (b) Exert control to a degree that causes the holder of an
19 independent contractor exemption certificate to violate section
20 1(2)(c)(i) of this act.

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

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

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

27 "Employer" means any person, body of persons, corporate or
28 otherwise, and the legal representatives of a deceased employer, all
29 while engaged in this state in any work covered by the provisions of
30 this title, by way of trade or business, or who contracts with one or
31 more workers, the essence of which is the personal labor of such worker
32 or workers. Or as an exception to the definition of employer, persons
33 or entities are not employers when they contract or agree to remunerate
34 the services performed by an individual who:

35 (1) Meets the tests set forth in ((subsections (1) through (6) of))

1 RCW 51.08.195 (1) through (6) or the separate tests set forth in RCW
2 51.08.181 for work performed that requires registration under chapter
3 18.27 RCW or licensing under chapter 19.28 RCW; or
4 (2) Is working under an active and valid independent contractor
5 exemption certificate.

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

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

17 (a) Meets the tests set forth in (~~(subsections (1) through (6) of)~~)
18 RCW 51.08.195 (1) through (6) or the separate tests set forth in RCW
19 51.08.181 for work performed that requires registration under chapter
20 18.27 RCW or licensing under chapter 19.28 RCW(~~(:—PROVIDED, That)~~); or

21 (b) Is working under an active and valid independent contractor
22 exemption certificate.

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

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

28 The independent contractor exemption certificate account is created
29 in the state treasury. All receipts from fees under section 1 of this
30 act and fines under section 4 of this act must be deposited into the
31 account. Moneys in the account may be spent only after appropriation.
32 Expenditures from the account may be used only for purposes of the
33 independent contractor exemption certificate program.

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

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

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

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

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

21 ((+4)) (d) On the effective date of the contract of service, the
22 individual is responsible for filing at the next applicable filing
23 period, both under the contract of service and in fact, a schedule of
24 expenses with the internal revenue service for the type of business the
25 individual is conducting;

26 ((+5)) (e) On the effective date of the contract of service, or
27 within a reasonable period after the effective date of the contract of
28 service, the individual has an active and valid certificate of
29 registration with the department of revenue, and an active and valid
30 account with any other state agencies as required by the particular
31 case, for the business the individual is conducting for the payment of
32 all state taxes normally paid by employers and businesses and has
33 registered for and received a unified business identifier number from
34 the state of Washington;

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

1 ~~((7))~~ (g) On the effective date of the contract of service, if
2 the nature of the work performed requires registration under chapter
3 18.27 RCW or licensure under chapter 19.28 RCW, the individual has a
4 valid contractor registration pursuant to chapter 18.27 RCW or an
5 electrical contractor license pursuant to chapter 19.28 RCW; or

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

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

11 As used in this chapter:

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

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

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

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

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

26 (c) Any individual employed in a bona fide executive,
27 administrative, or professional capacity or in the capacity of outside
28 salesperson as those terms are defined and delimited by rules of the
29 director. However, those terms shall be defined and delimited by the
30 human resources director pursuant to chapter 41.06 RCW for employees
31 employed under the director of personnel's jurisdiction;

32 (d) Any individual engaged in the activities of an educational,
33 charitable, religious, state or local governmental body or agency, or
34 nonprofit organization where the employer-employee relationship does
35 not in fact exist or where the services are rendered to such
36 organizations gratuitously. If the individual receives reimbursement
37 in lieu of compensation for normally incurred out-of-pocket expenses or

1 receives a nominal amount of compensation per unit of voluntary service
2 rendered, an employer-employee relationship is deemed not to exist for
3 the purpose of this section or for purposes of membership or
4 qualification in any state, local government, or publicly supported
5 retirement system other than that provided under chapter 41.24 RCW;

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

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

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

20 (h) Any individual engaged in forest protection and fire prevention
21 activities;

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

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

31 (k) Any resident, inmate, or patient of a state, county, or
32 municipal correctional, detention, treatment or rehabilitative
33 institution;

34 (l) Any individual who holds a public elective or appointive office
35 of the state, any county, city, town, municipal corporation or quasi
36 municipal corporation, political subdivision, or any instrumentality
37 thereof, or any employee of the state legislature;

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

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

5 (o) Any individual working under an active and valid independent
6 contractor exemption certificate approved by the department of labor
7 and industries;

8 (4) "Employer" includes any individual, partnership, association,
9 corporation, business trust, or any person or group of persons acting
10 directly or indirectly in the interest of an employer in relation to an
11 employee;

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

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

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

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

26 Except for services subject to RCW 50.44.010, 50.44.020, 50.44.030,
27 or 50.50.010, "employment" does not include services performed by a
28 person working under an active and valid independent contractor
29 exemption certificate approved by the department of labor and
30 industries.

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

33 (1) This chapter does not apply to any person in respect to his or
34 her employment in the capacity of an employee or servant as
35 distinguished from that of an independent contractor. For the purposes

1 of this section, the definition of employee includes those persons that
2 are defined in section 3121(d)(3)(B) of the federal internal revenue
3 code of 1986, as amended through January 1, 1991.

4 (2) Until July 1, 2010, this chapter does not apply to amounts
5 received by an individual from a corporation as compensation for
6 serving as a member of that corporation's board of directors.
7 Beginning on July 1, 2010, such amounts are taxable under RCW
8 82.04.290(2).

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

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

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

17 (4) A person working under an active and valid independent
18 contractor exemption certificate approved by the department of labor
19 and industries is an independent contractor for purposes of this
20 section.

21 NEW SECTION. Sec. 12. The department of labor and industries may
22 adopt rules to implement sections 1 through 4 of this act.

23 NEW SECTION. Sec. 13. Sections 1 through 4 of this act may be
24 known and cited as the independent contractor certification act.

25 NEW SECTION. Sec. 14. Sections 1 through 4 of this act are each
26 added to chapter 51.12 RCW.

27 NEW SECTION. Sec. 15. If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

31 NEW SECTION. Sec. 16. If any part of this act is found to be in
32 conflict with federal requirements that are a prescribed condition to
33 the allocation of federal funds to the state or the eligibility of

1 employers in this state for federal unemployment tax credits, the
2 conflicting part of this act is inoperative solely to the extent of the
3 conflict, and the finding or determination does not affect the
4 operation of the remainder of this act. Rules adopted under this act
5 must meet federal requirements that are a necessary condition to the
6 receipt of federal funds by the state or the granting of federal
7 unemployment tax credits to employers in this state.

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