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HOUSE BILL 2258

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State of Washington

63rd Legislature

2014 Regular Session

By Representatives Buys, Manweller, and Fagan

Read first time 01/15/14. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to simplifying and providing clarity to independent  
2 contractor tests for the construction industry; amending RCW 39.12.100,  
3 49.17.020, 49.46.010, 50.04.145, and 51.08.181; and providing an  
4 effective date.

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

6 **Sec. 1.** RCW 39.12.100 and 2009 c 63 s 1 are each amended to read  
7 as follows:

8 For the purposes of this chapter, ~~((an))~~ if the services provided  
9 by an individual employed on a public works project require  
10 registration under chapter 18.27 RCW or licensing under chapter 19.28  
11 RCW, the individual ~~((employed on a public works project))~~ is not  
12 considered to be a laborer, worker, or mechanic when:

13 (1) ~~((The individual has been and is free from control or direction~~  
14 ~~over the performance of the service, both under the contract of service~~  
15 ~~and in fact;~~

16 ~~(2) The service is either outside the usual course of business for~~  
17 ~~the contractor or contractors for whom the individual performs~~  
18 ~~services, or the service is performed outside all of the places of~~  
19 ~~business of the enterprise for which the individual performs services,~~

1 ~~or the individual is responsible, both under the contract and in fact,~~  
2 ~~for the costs of the principal place of business from which the service~~  
3 ~~is performed;~~

4 ~~(3) The individual is customarily engaged in an independently~~  
5 ~~established trade, occupation, profession, or business, of the same~~  
6 ~~nature as that involved in the contract of service, or the individual~~  
7 ~~has a principal place of business for the business the individual is~~  
8 ~~conducting that is eligible for a business deduction for federal income~~  
9 ~~tax purposes other than that furnished by the employer for which the~~  
10 ~~business has contracted to furnish services;~~

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

16 ~~(5))~~ On the effective date of the contract of service, or within  
17 a reasonable period after the effective date of the contract of  
18 service, the individual has an active and valid certificate of  
19 registration with the department of revenue, and an active and valid  
20 account with any 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 ~~((6) On the effective date of the contract of service, the~~  
26 ~~individual is maintaining a separate set of books or records that~~  
27 ~~reflect all items of income and expenses of the business which the~~  
28 ~~individual is conducting; and~~

29 ~~(7))~~ (2) On the effective date of the contract of service, ~~((if~~  
30 ~~the nature of the work performed requires registration under chapter~~  
31 ~~18.27 RCW or licensure under chapter 19.28 RCW,))~~ the individual has a  
32 valid contractor registration pursuant to chapter 18.27 RCW or an  
33 electrical contractor license pursuant to chapter 19.28 RCW.

34 **Sec. 2.** RCW 49.17.020 and 2010 c 8 s 12005 are each amended to  
35 read as follows:

36 For the purposes of this chapter:

1 (1) The term "agriculture" means farming and includes, but is not  
2 limited to:

3 (a) The cultivation and tillage of the soil;

4 (b) Dairying;

5 (c) The production, cultivation, growing, and harvesting of any  
6 agricultural or horticultural commodity;

7 (d) The raising of livestock, bees, fur-bearing animals, or  
8 poultry; and

9 (e) Any practices performed by a farmer or on a farm, incident to  
10 or in connection with such farming operations, including but not  
11 limited to preparation for market and delivery to:

12 (i) Storage;

13 (ii) Market; or

14 (iii) Carriers for transportation to market.

15 The term "agriculture" does not mean a farmer's processing for sale  
16 or handling for sale a commodity or product grown or produced by a  
17 person other than the farmer or the farmer's employees.

18 (2) The term "director" means the director of the department of  
19 labor and industries, or his or her designated representative.

20 (3) The term "department" means the department of labor and  
21 industries.

22 (4) The term "employer" means any person, firm, corporation,  
23 partnership, business trust, legal representative, or other business  
24 entity which engages in any business, industry, profession, or activity  
25 in this state and employs one or more employees or who contracts with  
26 one or more persons, the essence of which is the personal labor of such  
27 person or persons and includes the state, counties, cities, and all  
28 municipal corporations, public corporations, political subdivisions of  
29 the state, and charitable organizations: PROVIDED, That any person,  
30 partnership, or business entity not having employees, and who is  
31 covered by the industrial insurance act shall be considered both an  
32 employer and an employee.

33 (5) The term "employee" means an employee of an employer who is  
34 employed in the business of his or her employer whether by way of  
35 manual labor or otherwise and every person in this state who is engaged  
36 in the employment of or who is working under an independent contract  
37 the essence of which is his or her personal labor for an employer under  
38 this chapter whether by way of manual labor or otherwise. An

1 individual performing services that require registration under chapter  
2 18.27 RCW or licensing under chapter 19.28 RCW is not an "employee"  
3 when:

4 (a) On the effective date of the contract of service, or within a  
5 reasonable period after the effective date of the contract, the  
6 individual has an active and valid certificate of registration with the  
7 department of revenue, and an active and valid account with any other  
8 state agencies as required by the particular case, for the business the  
9 individual is conducting for the payment of all state taxes normally  
10 paid by employers and businesses and has registered for and received a  
11 unified business identifier number from the state of Washington; and

12 (b) On the effective date of the contract of service, the  
13 individual has a valid contractor registration pursuant to chapter  
14 18.27 RCW or an electrical contractor license pursuant to chapter 19.28  
15 RCW.

16 (6) The term "person" means one or more individuals, partnerships,  
17 associations, corporations, business trusts, legal representatives, or  
18 any organized group of persons.

19 (7) The term "safety and health standard" means a standard which  
20 requires the adoption or use of one or more practices, means, methods,  
21 operations, or processes reasonably necessary or appropriate to provide  
22 safe or healthful employment and places of employment.

23 (8) The term "workplace" means any plant, yard, premises, room, or  
24 other place where an employee or employees are employed for the  
25 performance of labor or service over which the employer has the right  
26 of access or control, and includes, but is not limited to, all  
27 workplaces covered by industrial insurance under Title 51 RCW, as now  
28 or hereafter amended.

29 (9) The term "working day" means a calendar day, except Saturdays,  
30 Sundays, and all legal holidays as set forth in RCW 1.16.050, as now or  
31 hereafter amended, and for the purposes of the computation of time  
32 within which an act is to be done under the provisions of this chapter,  
33 shall be computed by excluding the first working day and including the  
34 last working day.

35 **Sec. 3.** RCW 49.46.010 and 2013 c 141 s 1 are each amended to read  
36 as follows:

37 As used in this chapter:

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

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

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

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

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

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

21 (d) Any individual engaged in the activities of an educational,  
22 charitable, religious, state or local governmental body or agency, or  
23 nonprofit organization where the employer-employee relationship does  
24 not in fact exist or where the services are rendered to such  
25 organizations gratuitously. If the individual receives reimbursement  
26 in lieu of compensation for normally incurred out-of-pocket expenses or  
27 receives a nominal amount of compensation per unit of voluntary service  
28 rendered, an employer-employee relationship is deemed not to exist for  
29 the purpose of this section or for purposes of membership or  
30 qualification in any state, local government, or publicly supported  
31 retirement system other than that provided under chapter 41.24 RCW;

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

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

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

8 (h) Any individual engaged in forest protection and fire prevention  
9 activities;

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

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

19 (k) Any resident, inmate, or patient of a state, county, or  
20 municipal correctional, detention, treatment or rehabilitative  
21 institution;

22 (l) Any individual who holds a public elective or appointive office  
23 of the state, any county, city, town, municipal corporation or quasi  
24 municipal corporation, political subdivision, or any instrumentality  
25 thereof, or any employee of the state legislature;

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

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

30 (o) An individual performing services that require registration  
31 under chapter 18.27 RCW or licensing under chapter 19.28 RCW when:

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

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

3 (ii) On the effective date of the contract of service, the  
4 individual has a valid contractor registration pursuant to chapter  
5 18.27 RCW or an electrical contractor license pursuant to chapter 19.28  
6 RCW;

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

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

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

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

23 **Sec. 4.** RCW 50.04.145 and 2008 c 102 s 1 are each amended to read  
24 as follows:

25 The term "employment" shall not include services which require  
26 registration under chapter 18.27 RCW or licensing under chapter 19.28  
27 RCW rendered by an individual when:

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

31 ~~(2) The service is either outside the usual course of business for~~  
32 ~~which the service is performed, or the service is performed outside of~~  
33 ~~all the places of business of the enterprise for which the service is~~  
34 ~~performed, or the individual is responsible, both under the contract~~  
35 ~~and in fact, for the costs of the principal place of business from~~  
36 ~~which the service is performed;~~

1       ~~(3) The individual is customarily engaged in an independently~~  
2 ~~established trade, occupation, profession, or business, of the same~~  
3 ~~nature as that involved in the contract of service, or the individual~~  
4 ~~has a principal place of business for the business the individual is~~  
5 ~~conducting that is eligible for a business deduction for federal income~~  
6 ~~tax purposes, other than that furnished by the employer for which the~~  
7 ~~business has contracted to furnish services;~~

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

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

21       ~~((6) On the effective date of the contract of service, the~~  
22 ~~individual is maintaining a separate set of books or records that~~  
23 ~~reflect all items of income and expenses of the business that the~~  
24 ~~individual is conducting; and~~

25       (7)) (2) On the effective date of the contract of service, the  
26 individual has a valid contractor registration pursuant to chapter  
27 18.27 RCW or an electrical contractor license pursuant to chapter 19.28  
28 RCW.

29       **Sec. 5.** RCW 51.08.181 and 2008 c 102 s 5 are each amended to read  
30 as follows:

31       For the purposes of this title, any individual performing services  
32 that require registration under chapter 18.27 RCW or licensing under  
33 chapter 19.28 RCW for remuneration under an independent contract is not  
34 a worker when:

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



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;~~

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 other than that furnished by the employer for which the~~  
13 ~~business has contracted to furnish services;~~

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

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

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

31       ~~(7))~~ (2) On the effective date of the contract of service, the  
32 individual has a valid contractor registration pursuant to chapter  
33 18.27 RCW or an electrical contractor license pursuant to chapter 19.28  
34 RCW.

35       NEW SECTION.   **Sec. 6.** This act takes effect January 1, 2015.

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