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**SENATE BILL 5326**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators Keiser, Rivers, Saldaña, Billig, and Kuderer

AN ACT Relating to booth rental agreements; amending RCW 50.04.225, 51.12.020, and 82.04.360; adding a new section to chapter 18.16 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. **Sec.**  The legislature finds that broad exemptions for businesses structured using booth renters deny individuals eligibility for unemployment insurance and industrial insurance, and give businesses that use booth renters an unfair competitive advantage. Therefore, the legislature intends to encourage a competitive marketplace by removing these broad exemptions for businesses that rely on booth renters.

NEW SECTION. **Sec.**  A new section is added to chapter 18.16 RCW to read as follows:

No holder of a salon/shop license may lease, sublease, or provide space at the licensed location to any person for providing cosmetology or hair design as part of a separate business to be conducted by the person.

**Sec.**  RCW 50.04.225 and 1991 c 324 s 17 are each amended to read as follows:

Except for services subject to RCW 50.44.010, 50.44.020, 50.44.030, or 50.50.010, the term "employment" does not include services performed in a barber shop ((~~or cosmetology shop~~)) by persons licensed as a barber under chapter 18.16 RCW if ((~~the person is a booth renter as defined in RCW 18.16.020~~)):

(1) Performing the barbering services requires a license under chapter 18.16 RCW;

(2) The barber pays a fee for the use of the barber shop facilities; and

(3) The barber receives no compensation or other consideration from the owner of the barber shop for the services performed.

**Sec.**  RCW 51.12.020 and 2015 c 236 s 4 are each amended to read as follows:

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

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

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

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

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

(5) Sole proprietors or partners.

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

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

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

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

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

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

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

(10) Services performed by a newspaper vendor, carrier, or delivery person selling or distributing newspapers on the street, to offices, to businesses, or from house to house and any freelance news correspondent or "stringer" who, using his or her own equipment, chooses to submit material for publication for free or a fee when such material is published.

(11) Services performed by an insurance producer, as defined in RCW 48.17.010, or a surplus line broker licensed under chapter 48.15 RCW.

(12) ((~~Services performed by a booth renter. However, a person exempted under this subsection may elect coverage under RCW 51.32.030.~~

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

(a) Management of the company is vested in its members, and the members for whom exemption is sought would qualify for exemption under subsection (5) of this section were the company a sole proprietorship or partnership; or

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

((~~(14)~~)) (13) A driver providing commercial transportation services as defined in RCW 48.177.005. The driver may elect coverage in the manner provided by RCW 51.32.030.

((~~(15)~~)) (14) For hire vehicle operators under chapter 46.72 RCW who own or lease the for hire vehicle, chauffeurs under chapter 46.72A RCW who own or lease the limousine, and operators of taxicabs under chapter 81.72 RCW who own or lease the taxicab. An owner or lessee may elect coverage in the manner provided by RCW 51.32.030.

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

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

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

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

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

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

NEW SECTION. **Sec.**  This act takes effect January 1, 2020.

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