

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 76

BY BUSINESS COMMITTEE

AN ACT

RELATING TO EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1316A, IDAHO CODE, TO PROVIDE THAT CERTAIN EMPLOYMENT RELATING TO THE SELLING OR SOLICITING OF SALE OF CONSUMER PRODUCTS, INCLUDING SERVICES AND OTHER INTANGIBLES, SHALL BE CONSIDERED EXEMPT EMPLOYMENT AND TO SPECIFY CONDITIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 72-1316A, Idaho Code, be, and the same is hereby amended to read as follows:

72-1316A. EXEMPT EMPLOYMENT. "Exempt employment" means service performed:

- (1) By an individual in the employ of his spouse or child.
- (2) By a person under the age of twenty-one (21) years in the employ of his father or mother.
- (3) By an individual under the age of twenty-two (22) years who is enrolled as a student in a full-time program at an accredited nonprofit or public education institution for which credit at such institution is earned in a program which combines academic instruction with work experience. This subsection shall not apply to service performed in a program established at the request of an employer or group of employers.
- (4) In the employ of the United States government or an instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this chapter.
- (5) In the employ of a governmental entity in the exercise of duties:
 - (a) As an elected official;
 - (b) As a member of a legislative body, or a member of the judiciary, of a state or political subdivision thereof;
 - (c) As a member of the state national guard or air national guard;
 - (d) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or
 - (e) In a position which, pursuant to the laws of this state, is designated as (i) a major nontenured policymaking or advisory position, or (ii) a policymaking or advisory position which ordinarily does not require more than eight (8) hours per week.
- (6) By an inmate of a correctional, custodial or penal institution, if such services are performed for or within such institution.
- (7) In the employ of:
 - (a) A church or convention or association of churches; or

1 (b) An organization which is operated primarily for religious purposes and which is
2 operated, supervised, controlled, or principally supported by a church, or convention or
3 association of churches; or

4 (c) In the employ of an institution of higher education, if it is devoted primarily to
5 preparation of a student for the ministry or training candidates to become members of a
6 religious order; or

7 (d) By a duly ordained, commissioned, or licensed minister of a church in the exercise of
8 his ministry or by a member of a religious order in the exercise of duties required by such
9 order.

10 (8) By a program participant in a facility that provides rehabilitation for individuals
11 whose earning capacity is impaired by age, physical or mental deficiency, or injury or provides
12 remunerative work for individuals who, because of their impaired physical or mental capacity,
13 cannot be readily absorbed into the labor market.

14 (9) As part of an unemployment work relief program or as part of an unemployment
15 work training program assisted or financed in whole or in part by any federal agency or an
16 agency of a state or political subdivision thereof, by an individual receiving such work relief or
17 work training.

18 (10) Service with respect to which unemployment insurance is payable under an
19 unemployment insurance system established by an act of congress other than the social security
20 act.

21 (11) As a student nurse in the employ of a hospital or nurses' training school by an
22 individual who is enrolled and is regularly attending courses in a nurses' training school
23 approved pursuant to state law, and service performed as an intern in the employ of a hospital
24 by an individual who has completed a course in a medical school approved pursuant to state
25 law.

26 (12) By an individual under the age of eighteen (18) years of age in the delivery or
27 distribution of newspapers or shopping news not including delivery or distribution to any point
28 for subsequent delivery or distribution.

29 (13) By an individual for a person as an insurance agent or as an insurance solicitor, if all
30 such service performed by such individual for such person is performed for remuneration solely
31 by way of commission.

32 (14) By an individual for a real estate broker as an associate real estate broker or as a real
33 estate salesman, if all such service performed by such individual for such person is performed
34 for remuneration solely by way of commission.

35 (15) Service covered by an election approved by the agency charged with the
36 administration of any other state or federal unemployment insurance law, in accordance with an
37 arrangement pursuant to section 72-1344, Idaho Code.

38 (16) In the employ of a school or college by a student who is enrolled and regularly
39 attending classes at such school or college.

40 (17) In the employ of a hospital by a resident patient of such hospital.

41 (18) By a member of an AmeriCorps program.

42 (19) By an individual who is paid less than fifty dollars (\$50.00) per calendar quarter
43 for performing work that is not in the course of the employer's trade or business, and who is
44 not regularly employed by such employer to perform such service. For the purposes of this
45 subsection, an individual shall be deemed to be regularly employed by an employer during a
46 calendar quarter only if:

1 (a) On each of some twenty-four (24) days during such quarter such individual performs
2 for such employer for some portion of the day service not in the course of the employer's
3 trade or business; or

4 (b) Such individual was so employed by such employer in the performance of such
5 service during the preceding calendar quarter.

6 (20) By an individual who is engaged in the trade or business of selling or soliciting
7 the sale of consumer products, including services or other intangibles, in a private home or a
8 location other than in a permanent retail establishment, including those instances where the sale
9 or solicitation of a sale is to a buyer on a buy-sell basis, a deposit-commission basis, or any
10 similar basis for resale by the buyer or any other person, provided the following criteria are
11 met:

12 (a) Substantially all the remuneration, whether or not received in cash, for the
13 performance of the services is directly related to sales or other output, including the
14 performance of services, rather than to the number of hours worked.

15 (b) The services performed by the individual are performed pursuant to a written contract
16 between the individual and the person for whom the services are performed, and the
17 contract provides that the individual shall not be treated as an employee for federal and
18 state tax purposes.