

2 **ESB 5850 - H COMM AMD ADOPTED 4-18-97**

3 By Committee on Commerce & Labor

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 51.24.035 and 1987 c 212 s 1801 are each amended to  
8 read as follows:

9 (1) Notwithstanding RCW 51.24.030(1), the injured worker or  
10 beneficiary may not seek damages (~~((against a design professional who is  
11 a third person and who has been retained to perform professional  
12 services on a construction project, or any employee of a design  
13 professional who is assisting or representing the design professional  
14 in the performance of professional services on the site of the  
15 construction project, unless responsibility for safety practices is  
16 specifically assumed by contract, the provisions of which were mutually  
17 negotiated, or the design professional actually exercised control over  
18 the portion of the premises where the worker was injured))~~ for an  
19 injury or occupational disease occurring in the course of employment at  
20 the site of a construction project, whether accomplished by a single  
21 contract or by multiple contracts, against the owner or developer of  
22 the project or against any person or entity performing work, furnishing  
23 materials, or providing services to or for the construction project  
24 including, but not limited to, design professionals, construction  
25 managers, general or prime contractors, suppliers, subcontractors of  
26 any tier, and any employee of a design professional, construction  
27 manager, general or prime contractor, supplier, or subcontractor of any  
28 tier.

29 (2) The immunity provided by this section does not extend to any  
30 person or entity who injures a worker by deliberate intention as  
31 defined in RCW 51.24.020, and it is against public policy to seek  
32 indemnification in construction contracts against such liability. Such  
33 contractual clauses are void and unenforceable.

34 (3) The immunity provided by this section does not extend to  
35 manufacturers and product sellers for product liability actions as  
36 defined in chapter 7.72 RCW.

1       (4) The immunity provided by this section does not apply to the  
2 negligent preparation of design plans and specifications by a design  
3 professional.

4       (~~(3)~~) (5) For the purposes of this section, "design professional"  
5 means an architect, professional engineer, land surveyor, or landscape  
6 architect, who is licensed or authorized by law to practice such  
7 profession, or any corporation organized under chapter 18.100 RCW or  
8 authorized under RCW 18.08.420 or 18.43.130 to render design services  
9 through the practice of one or more of such professions.

10       **Sec. 2.** RCW 51.16.140 and 1989 c 385 s 3 are each amended to read  
11 as follows:

12       (1)(a) Except as provided in (b) of this subsection, every employer  
13 who is not a self-insurer shall deduct from the pay of each of his or  
14 her workers one-half of the amount he or she is required to pay(~~(7)~~)  
15 for medical benefits within each risk classification. Such amount  
16 shall be periodically determined by the director and reported by him or  
17 her to all employers under this title: PROVIDED, That the state  
18 governmental unit shall pay the entire amount into the medical aid fund  
19 for volunteers, as defined in RCW 51.12.035, and the state  
20 apprenticeship council shall pay the entire amount into the medical aid  
21 fund for registered apprentices or trainees, for the purposes of RCW  
22 51.12.130. The deduction under this section is not authorized for  
23 premiums assessed under RCW 51.16.210.

24       (b) For workers in the construction industry, the amount deducted  
25 pursuant to (a) of this subsection may not exceed one-half of the basic  
26 manual premium rate established by the department for the applicable  
27 risk classification. This subsection (1)(b) applies beginning with the  
28 first calendar quarter that begins six months after the date that  
29 sections 1, 3, and 4, chapter . . ., Laws of 1997 (sections 1, 3, and  
30 4 of this act) take effect.

31       (2) It shall be unlawful for the employer, unless specifically  
32 authorized by this title, to deduct or obtain any part of the premium  
33 or other costs required to be by him or her paid from the wages or  
34 earnings of any of his or her workers, and the making of or attempt to  
35 make any such deduction shall be a gross misdemeanor.

36       NEW SECTION. **Sec. 3.** A new section is added to chapter 49.17 RCW  
37 to read as follows:

1 All construction employers have a duty to provide a safe place to  
2 work for their own employees and the employees of their subcontractors  
3 of any tier working at the site of a construction project. This duty  
4 shall be considered within the context of standard construction  
5 industry practices. Such duty includes implementation of a safety  
6 program that is effective in practice.

7 All construction employers shall take reasonable steps to ensure  
8 that their safety programs are designed to comply with Title 51 RCW and  
9 this chapter, including the development, implementation, and periodic  
10 evaluation of a written accident prevention plan specific to the site  
11 of each construction project. All construction employers shall  
12 designate an individual with responsibility for construction jobsite  
13 safety. All construction employers shall inform their own employees of  
14 the name and telephone number of that designated individual. The prime  
15 contractor or general contractor shall post the name and telephone  
16 number of its designated individual at the site of a construction  
17 project. All subcontractors shall inform the prime contractor or  
18 general contractor of the name and telephone number of the  
19 subcontractor's designated individual responsible for construction  
20 jobsite safety.

21 Suggestions for safety improvements and identification of potential  
22 hazards at the site of a construction project are to be encouraged.  
23 Permissible disciplinary actions for violation of these or other  
24 appropriately communicated requirements include, but are not limited  
25 to: Verbal or written reprimand, suspension from work, and termination  
26 for cause. Such disciplinary actions for violations shall be subject  
27 to the disciplinary provisions set forth in an employer's written  
28 policy statement or in a written agreement between an employer and  
29 employees, if such a written agreement exists.

30 Neither violation of the provisions of this section nor the  
31 issuance of a citation under this chapter eliminates or effects any  
32 change to the immunity conferred in RCW 51.24.035.

33 NEW SECTION. **Sec. 4.** A new section is added to chapter 49.17 RCW  
34 to read as follows:

35 The prime contractor or general contractor has the primary  
36 responsibility for compliance with safety regulations at each  
37 construction jobsite. If a construction employer's safety program is  
38 effective in practice, no citation shall be issued to the construction

1 employer for violations of this chapter by any of the construction  
2 employer's subcontractors of any tier. A safety program shall be  
3 considered effective in practice if it complies with the following:

4 (1) A prime contractor or general contractor's subcontractors are  
5 required, by contract, to comply with the provisions of this chapter;  
6 and

7 (2) The prime contractor or general contractor develops,  
8 implements, and enforces a written accident prevention program for each  
9 construction project; and

10 (3) The prime contractor or general contractor requires each  
11 subcontractor at the site of a construction project to provide an  
12 accident prevention plan for that construction project, which shall be  
13 available at the construction jobsite or at the prime contractor or  
14 general contractor's main business office located within the state of  
15 Washington; and

16 (4) The prime contractor or general contractor posts at that  
17 construction project the name and telephone number of its designated  
18 individual with responsibility for construction jobsite safety at that  
19 construction jobsite; and

20 (5) The prime contractor or general contractor provides to its  
21 employees all safety equipment necessary for that construction jobsite;  
22 and

23 (6) The prime contractor or general contractor provides, or  
24 requires by contract its subcontractors to provide to the  
25 subcontractor's employees, all safety equipment necessary for that  
26 construction jobsite.

27 NEW SECTION. **Sec. 5.** The department of labor and industries shall  
28 adopt rules in consultation with the affected parties, that are  
29 consistent with the legislative intent of this act to implement this  
30 act.

31 NEW SECTION. **Sec. 6.** This act is necessary for the immediate  
32 preservation of the public peace, health, or safety, or support of the  
33 state government and its existing public institutions, and takes effect  
34 immediately."

1 Correct the title accordingly.

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