

HOUSE BILL REPORT

SHB 2312

As Amended by the Senate

Title: An act relating to workers' compensation obligations of employers not domiciled in Washington.

Brief Description: Prescribing workers' compensation obligations of employers not domiciled in Washington.

Sponsors: By House Committee on Commerce/Lab (originally sponsored by Representatives Doumit, Pennington, Hatfield, Kenney, Clements, Carlson, Kessler, Anderson, Dunn and Tokuda).

Brief History:

Committee Activity:

Commerce & Labor: 1/28/98, 2/5/98 [DPS].

Floor Activity:

Passed House: 2/12/98, 94-0.

Senate Amended.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives McMorris, Chairman; Honeyford, Vice Chairman; Conway, Ranking Minority Member; Wood, Assistant Ranking Minority Member; Boldt; Clements; Cole; Hatfield and Lisk.

Staff: Chris Cordes (786-7103).

Background:

Coverage of Workers under Industrial Insurance

The Washington industrial insurance law, with certain exemptions, covers all workers employed by persons or entities engaged in business in Washington.

Under case law, this coverage does not include workers hired in Washington to work exclusively in another state by employers not engaged in any business in Washington. In addition, there may not be coverage if the worker's employment in Washington is

subject to a reciprocal agreement. The industrial insurance law permits the director of the Department of Labor and Industries to enter into reciprocal agreements with other states and provinces of Canada governing jurisdiction over claims when the contract of employment arises in one jurisdiction and the injury occurs in another.

The department has entered into reciprocal agreements with Idaho, Montana, North Dakota, Nevada, Oregon, South Dakota, and Wyoming. Under the Oregon reciprocal agreement, the Washington state fund is responsible for coverage of a Washington employer's Washington workers who are injured in Oregon while the employer has a temporary workplace in Oregon, and Oregon is similarly responsible for Oregon employers' Oregon workers working in a temporary workplace in Washington. Under the agreement, a "Washington worker" is a person hired to work in Washington, while an "Oregon worker" is a person hired to work in Oregon.

Responsibility of Out-of-State Employers to Secure Workers' Compensation Coverage

Registered and licensed contractors. An out-of-state employer registering as a contractor under Washington law or applying for an electrical contractor license must show an industrial insurance account number covering employees domiciled in Washington and evidence of workers' compensation coverage in the employer's state of domicile for employees working in Washington who are not domiciled in Washington. The employer's unified business identifier account number may be used in lieu of the industrial insurance account number.

Procedures applying to out-of-state employers. Generally, an out-of-state employer who has employees working in Washington is penalized under Washington's industrial insurance law if, after one of his or her workers is injured, the employer had failed to secure workers' compensation coverage. If that injured worker is entitled to compensation under Washington law because of an injury in Washington, the employer who does not have an account with the state fund in Washington, or is not qualified as a self-insurer, must file a certificate from the employer's state of domicile showing that the employer has coverage for the injured worker.

Filing a certificate appoints the director of the Department of Labor and Industries as the employer's agent for service of process in any proceeding brought by the injured worker under Washington's industrial insurance law. If the employer is insured, the insurance carrier is subject to Washington's industrial insurance law with respect to the claim, up to the amount of its liability under the other state law, unless its contract with the employer provides for coverage equivalent to Washington's coverage. The director may require the employer to file additional security if the insurance coverage is less than the total compensation to which the injured worker is entitled under Washington law. If the employer is self-insured under the other state's law, the employer may be deemed to be qualified as a self-insurer under Washington's law.

If the employer does not have coverage in the other state or has inadequate coverage:

- the injured worker receives benefits from the Washington state fund; and
- the employer is subject to a penalty of up to 50 percent of the department's cost beyond what is covered by the employer or its insurer.

(Washington employers who violate industrial insurance requirements are subject to a penalty of \$500 or double the premiums that were incurred before obtaining coverage, and from 50 to 100 percent of the cost of the benefits paid to a worker before coverage is obtained.)

Washington Employers Operating in Oregon

Generally, a worker from Washington and the worker's Washington employer are exempt from Oregon's workers' compensation coverage requirements if:

- the worker is temporarily working in Oregon;
- the employer has workers' compensation coverage for the worker under Washington's law; and
- Washington recognizes Oregon's extraterritorial provisions and has reciprocal exemptions for Oregon employers.

However, Oregon's public works law requires all public works contracts to contain a clause making employers working under the contract subject to Oregon's workers' compensation law.

Summary of Bill: Out-of-state employers who are employing workers in Washington must have workers' compensation coverage for all workers, as follows:

- The employer must have an industrial insurance account with the Department of Labor and Industries, or be qualified as a self-insurer in Washington, for coverage of Washington workers.
- Non-Washington workers must also be covered under the Washington coverage unless the employer is domiciled in a state or province with a reciprocity agreement with Washington. In that case, the employer may file a certificate with the department from the workers' compensation agency of the employer's state of domicile showing that the employer has workers' compensation coverage in the other state or province for non-Washington workers.

When an out-of-state employer files a certificate from another state or province, the certificate authorizes the department to act on behalf of the employer with regard to a claim filed under Washington's law.

The liability of an out-of-state employer is modified by adding that the out-of-state employer is liable for the total compensation due under Washington law and that the department may require additional security from a self-insured employer.

Contractors applying for registration or licensing in Washington must also comply with these coverage requirements. A contractor may not use his or her unified business identifier account number in lieu of an industrial insurance account number if the contractor will employ workers in Washington.

Out-of-state employers who fail to comply with these requirements are subject to the same penalties as Washington employers who fail to comply.

"Washington worker" is defined as a person working in Washington who was hired in Washington or hired in another state to work in Washington and not in the other state.

EFFECT OF SENATE AMENDMENT(S): The Senate striking amendment limits the new out-of-state employer coverage requirements to those employers who are employing workers in work that requires the employer to be a registered contractor, licensed electrical contractor, or prequalified on public transportation projects. These employers must insure their workers' compensation obligations under Washington law, unless the employer is permitted by a reciprocal agreement with the employer's state of domicile to file a certificate of coverage issued under the employer's own state law. New provisions are deleted from the substitute bill that would have (1) authorized the department to act on behalf of the employer who files a certificate; (2) authorized the department to require additional security from a self-insured out-of-state employer; (3) made explicit the out-of-state employer's liability for the total compensation to which the worker is entitled under Washington law; and (4) defined "Washington worker." The Senate amendment (1) modifies the Department of Labor and Industries' authority to enter into reciprocal agreements by requiring out-of-state employers to cover their workers in Washington under Washington law if the other state's law requires coverage under the other state' law for work which in Washington would require the employer to be a registered contractor, a licensed electrical contractor, or prequalified on public transportation projects; and (2) adds an intent section and a study of these new provisions by the Workers' Compensation Advisory Committee.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The Legislature needs to address a problem that is particularly acute for the construction industry. Under the current laws, Oregon contractors have an advantage when they come to Washington on construction jobs. These out-of-state contractors only need to have Oregon coverage, while Washington contractors working in Oregon must have coverage under both state laws. In addition, Washington contractors are rated in the high risk pool when they obtain Oregon coverage. The

department needs better leverage to obtain a level playing field when negotiating reciprocity agreements with other states.

Testimony Against: This is a complex issue that needs to be addressed carefully. For example, the scope of the bill is very broad and may cover more than is intended. It is a concern when states begin raising fences against each other's employers and creating a retaliatory environment. If the problem is to be addressed completely, the bill should provide for full reciprocity between Oregon and Washington. Part of the problem is that Washington is an exclusive state fund state surrounded by states with private insurance.

Testified: (In support) Representative Mark Doumit, prime sponsor; David Roewe; Douglas Connell, Department of Labor and Industries; Jim King, Washington Drywall Coalition; Bob Dilger, Washington State Building and Construction Trades Council; and Robby Stern, Washington State Labor Council. (In support, with concerns) Rick Slunaker, Associated General Contractors. (Opposed) Dale Newell, Independent Agents and Brokers of the West. (No position) Clif Finch, Association of Washington Business; and Wayne Lieb, Washington State Trial Lawyers Association.