HOUSE BILL ANALYSIS HB 2312

Brief Description: Prescribing workers' compensation obligations of employers not

domiciled in Washington.

Sponsors: Doumit, Pennington, Hatfield, Kenney and Clements

Hearing: January 28, 1998

BACKGROUND:

COVERAGE OF WORKERS UNDER INDUSTRIAL INSURANCE

The Washington industrial insurance law, with certain exemptions, covers all workers employed by persons or entities engaged, through trade or business, in Washington in work subject to the industrial insurance law.

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 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

<u>Registered and licensed contractors</u>. 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.

<u>Procedures applying to out-of-state employers</u>. 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:

- b the injured worker receives benefits from the Washington state fund; and
- b 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 OPERATING IN OREGON

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

- b the worker is temporarily working in Oregon;
- b the employer has workers' compensation coverage for the worker under Washington's law; and
- b 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 comply with one of the following:

- b have an account with the Department of Labor and Industries (the Washington state fund);
- b be qualified as a self-insurer; or
- b file a certificate with the department from the workers' compensation agency of the employer's state of domicile showing: (1) that the employer has workers' compensation coverage in the other state; and (2) that the employer is subject to a reciprocal agreement between the two states.

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

RULES AUTHORITY: The bill does not contain provisions addressing the rule making powers of an agency.

FISCAL NOTE: Not requested.

EFFECTIVE DATE: Ninety days after adjournment of a session in which bill is passed.