
ENGROSSED SENATE BILL 5850

State of Washington 55th Legislature 1997 Regular Session

By Senators Anderson, Newhouse, Haugen and Horn

Read first time 02/17/97. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to employment in the construction industry;
2 amending RCW 51.24.035 and 51.16.140; adding new sections to chapter
3 49.17 RCW; creating a new section; providing an effective date; and
4 declaring an emergency.

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

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

8 (1) Notwithstanding RCW 51.24.030(1), the injured worker or
9 beneficiary may not seek damages (~~((against a design professional who is
10 a third person and who has been retained to perform professional
11 services on a construction project, or any employee of a design
12 professional who is assisting or representing the design professional
13 in the performance of professional services on the site of the
14 construction project, unless responsibility for safety practices is
15 specifically assumed by contract, the provisions of which were mutually
16 negotiated, or the design professional actually exercised control over
17 the portion of the premises where the worker was injured))~~ for an
18 injury or occupational disease occurring in the course of employment at
19 the site of a construction project, whether accomplished by a single

1 contract or by multiple contracts, against a general or prime
2 contractor, a subcontractor of any tier, or any of their employees.

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

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

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

14 ((+3)) (5) For the purposes of this section, "design professional"
15 means an architect, professional engineer, land surveyor, or landscape
16 architect, who is licensed or authorized by law to practice such
17 profession, or any corporation organized under chapter 18.100 RCW or
18 authorized under RCW 18.08.420 or 18.43.130 to render design services
19 through the practice of one or more of such professions.

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

22 (1) Every employer who is not a self-insurer shall deduct from the
23 pay of each of his or her workers one-half of the amount he or she is
24 required to pay((7)) for medical benefits within each risk
25 classification, except that for workers in the construction industry,
26 the amount deducted shall not be more than forty percent of the basic
27 manual premium rate established by the department for the applicable
28 risk classification. Such amount shall be periodically determined by
29 the director and reported by him or her to all employers under this
30 title: PROVIDED, That the state governmental unit shall pay the entire
31 amount into the medical aid fund for volunteers, as defined in RCW
32 51.12.035, and the state apprenticeship council shall pay the entire
33 amount into the medical aid fund for registered apprentices or
34 trainees, for the purposes of RCW 51.12.130. The deduction under this
35 section is not authorized for premiums assessed under RCW 51.16.210.

36 (2) It shall be unlawful for the employer, unless specifically
37 authorized by this title, to deduct or obtain any part of the premium
38 or other costs required to be by him or her paid from the wages or

1 earnings of any of his or her workers, and the making of or attempt to
2 make any such deduction shall be a gross misdemeanor.

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

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

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

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

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

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

3 The prime contractor or general contractor has the primary
4 responsibility for compliance with safety regulations at each
5 construction jobsite. If a construction employer's safety program is
6 effective in practice, no citation shall be issued to the construction
7 employer for violations of this chapter by any of the construction
8 employer's subcontractors of any tier. A safety program shall be
9 considered effective in practice if it complies with the following:

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

13 (2) The prime contractor or general contractor develops,
14 implements, and enforces a written accident prevention program for each
15 construction project; and

16 (3) The prime contractor or general contractor requires each
17 subcontractor at the site of a construction project to provide an
18 accident prevention plan for that construction project, which shall be
19 available at the construction jobsite or at the prime contractor or
20 general contractor's main business office located within the state of
21 Washington; and

22 (4) The prime contractor or general contractor posts at that
23 construction project the name and telephone number of its designated
24 individual with responsibility for construction jobsite safety at that
25 construction jobsite; and

26 (5) The prime contractor or general contractor provides to its
27 employees all safety equipment necessary for that construction jobsite;
28 and

29 (6) The prime contractor or general contractor provides, or
30 requires by contract its subcontractors to provide to the
31 subcontractor's employees, all safety equipment necessary for that
32 construction jobsite.

33 NEW SECTION. **Sec. 5.** The department of labor and industries shall
34 adopt rules in consultation with the affected parties, that are
35 consistent with the legislative intent of this act to implement this
36 act.

1 NEW SECTION. **Sec. 6.** (1) Sections 1, 3, 4, and 5 of this act are
2 necessary for the immediate preservation of the public peace, health,
3 or safety, or support of the state government and its existing public
4 institutions, and take effect immediately.

5 (2) Section 2 of this act takes effect January 1, 1998.

--- END ---