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HOUSE BILL 1398

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State of Washington                      56th Legislature                      1999 Regular Session

By Representatives McMorris, Lisk and Clements

Read first time . Referred to Committee on .

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 new sections; 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 the owner or developer of  
2 the project or against any person or entity performing work, furnishing  
3 materials, or providing services to or for the construction project  
4 including, but not limited to, design professionals, construction  
5 managers, general or prime contractors, suppliers, subcontractors of  
6 any tier, and any employee of a design professional, construction  
7 manager, general or prime contractor, supplier, or subcontractor of any  
8 tier.

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

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

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

20 (~~(3)~~) (5) For the purposes of this section, "design professional"  
21 means an architect, professional engineer, land surveyor, or landscape  
22 architect, who is licensed or authorized by law to practice such  
23 profession, or any corporation organized under chapter 18.100 RCW or  
24 authorized under RCW 18.08.420 or 18.43.130 to render design services  
25 through the practice of one or more of such professions.

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

28 (1) Every employer who is not a self-insurer shall deduct from the  
29 pay of each of his or her workers one-half of the amount he or she is  
30 required to pay(~~(7)~~) for medical benefits within each risk  
31 classification, except that for workers in the construction industry,  
32 the amount deducted shall not be more than one-half of the basic manual  
33 premium rate established by the department for the applicable risk  
34 classification. Such amount shall be periodically determined by the  
35 director and reported by him or her to all employers under this title:  
36 PROVIDED, That the state governmental unit shall pay the entire amount  
37 into the medical aid fund for volunteers, as defined in RCW 51.12.035,  
38 and the state apprenticeship council shall pay the entire amount into

1 the medical aid fund for registered apprentices or trainees, for the  
2 purposes of RCW 51.12.130. The deduction under this section is not  
3 authorized for premiums assessed under RCW 51.16.210.

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

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

11 (1) All construction employers have a duty to provide a safe place  
12 to work for their own employees and for the employees of their  
13 subcontractors of any tier working at the site of a construction  
14 project. This duty shall be considered within the context of standard  
15 construction industry practices; and this duty includes implementation  
16 of a safety program that is effective in practice.

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

31 (3) Suggestions for safety improvements and identification of  
32 potential hazards at the site of a construction project are to be  
33 encouraged. Permissible disciplinary actions for violation of these or  
34 other appropriately communicated requirements include, but are not  
35 limited to: Verbal or written reprimand, suspension from work, and  
36 termination for cause. These disciplinary actions for violations are  
37 subject to the disciplinary provisions set forth in an employer's

1 written policy statement or in a written agreement between an employer  
2 and employees, if such a written agreement exists.

3 (4) Neither violation of the provisions of this section nor the  
4 issuance of a citation under this chapter eliminates or effects any  
5 change to the immunity conferred in RCW 51.24.035.

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

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

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

17 (2) The prime contractor or general contractor develops,  
18 implements, and enforces a written accident prevention program for each  
19 construction project;

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

26 (4) The prime contractor or general contractor posts at that  
27 construction project the name and telephone number of its designated  
28 individual with responsibility for construction jobsite safety at that  
29 construction jobsite;

30 (5) The prime contractor or general contractor provides to its  
31 employees all safety equipment necessary for that construction jobsite;  
32 and

33 (6) The prime contractor or general contractor provides, or  
34 requires by contract its subcontractors to provide to the  
35 subcontractor's employees, all safety equipment necessary for that  
36 construction jobsite.

1        NEW SECTION.   **Sec. 5.**   The department of labor and industries shall  
2   adopt, in consultation with the affected parties, rules that are  
3   consistent with the legislative intent of this act and shall implement  
4   this act.

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

9        (2) Section 2 of this act takes effect January 1, 2000.

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