

1 **ESB 5882** - H AMD
2 By Representatives Kessler and Clements

3 Strike everything after the enacting clause and insert the
4 following:

5 "NEW SECTION. **Sec. 1.** A new section is added to chapter 49.17
6 RCW to read as follows:

7 The legislature finds that employer and employee education, pilot
8 demonstrations projects, and legislative review must be completed prior
9 to the enforcement of any ergonomics rules. The legislature wishes to
10 accelerate ergonomics awareness education. The legislature also wants
11 to ensure that pilot demonstration projects for various industries, as
12 contained in the department's implementation plan for the agency's
13 rules to reduce musculoskeletal disorder, are carried out for key
14 industries; that alternative musculoskeletal disorder reduction
15 techniques can be tried; that certain information is obtained from all
16 projects; and that the projects are initiated and completed so
17 information to reduce injuries can be distributed as soon as possible,
18 and the legislature and all interested parties can review the results
19 of the projects. The legislature also wishes to have the joint
20 legislative audit and review committee review the rules adopted by the
21 department of labor and industries, and the results of the pilot
22 demonstration projects, and make recommendations regarding the rules,
23 alternatives to the rules, and the need for implementation. The
24 legislature also wants to ensure that safety and health impact grants
25 be carried out to develop education and training programs, technical
26 solutions, and best practices to prevent workplace injuries and
27 illnesses. The acceleration of ergonomics awareness education, the
28 completion of pilot demonstration projects, and the completion of the
29 legislative review of the ergonomics rules are conditions precedent to
30 the enforcement of any ergonomics rules.

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

33 (1) The legislature directs the department to accelerate the
34 dissemination of ergonomics awareness educational materials to

1 employers and employees to the maximum extent possible. The department
2 shall make any necessary adjustments to the use of their resources to
3 produce musculoskeletal disorder prevention and awareness educational
4 materials for employers and employees that are written, on-line, or
5 available through other media, as determined to be cost-effective by
6 the department, at the earliest date possible for use on a voluntary
7 basis. The department shall obtain input from employers and employees
8 from large and small businesses and units of government in preparing
9 these materials.

10 (2) The department shall carry out comprehensive pilot
11 demonstration projects on the technological and economic feasibility of
12 implementing the rules dealing with musculoskeletal disorders, codified
13 as WAC 296-62-05101 through 296-62-05176, as adopted on May 26, 2000,
14 or any new or amended rules dealing with musculoskeletal disorders that
15 are substantially the same as these rules. The department shall, at
16 the earliest date possible, establish pilot demonstration projects for
17 industries initially required to come into compliance with the rules.
18 Pilot demonstration projects for each of these industries shall include
19 a representative sample of smaller and larger employers in each
20 industry, who volunteer to participate and who shall not be subject to
21 any enforcement action as a result of the project. The department may
22 establish more than one pilot demonstration project for each industry
23 as it deems necessary. The pilot demonstration projects for these
24 industries shall be completed, to the maximum extent possible, by July
25 1, 2003. The goal of each pilot demonstration project shall be:

26 (a) To test the implementation of the rules as adopted and based
27 on a set of draft practices agreed to by the participants with the
28 advice of the department, and to report at a minimum on the following:

29 (i) The cost of implementation including but not limited to
30 monetary expenditures, both direct and indirect, and time for
31 participating employers;

32 (ii) The ease of implementation and any implementation problems
33 participants identify;

34 (iii) Any recommendations participants have to modify the rules;

35 (iv) The cost to the department to provide necessary technical
36 assistance to employers to assist participants to implement the rules;
37 and

1 (v) The effectiveness of the rules in reducing musculoskeletal
2 disorders; and

3 (b) To test alternatives to the rules in an effort to reduce
4 musculoskeletal disorders and to provide the following information on
5 each alternative tried:

6 (i) A clear description of the alternative;

7 (ii) The cost of implementation including but not limited to
8 monetary expenditures, both direct and indirect, and time for
9 participating employers;

10 (iii) The ease of implementation and any implementation problems
11 participants identify;

12 (iv) Any recommendations participants have to modify the
13 alternative;

14 (v) The cost to the department to provide necessary technical
15 assistance to employers to assist them in implementing the alternative;
16 and

17 (vi) The effectiveness of the alternative in reducing
18 musculoskeletal disorders.

19 (3) To the extent possible, the department of labor and industries
20 shall provide periodic information to the industries identified in
21 subsection (2) of this section and any other industries deemed
22 appropriate by the department on practices, equipment, and products
23 that have been identified by the department as being effective in
24 reducing musculoskeletal disorders.

25 NEW SECTION. **Sec. 3.** A new section is added to chapter 44.28 RCW
26 to read as follows:

27 The joint legislative audit and review committee shall conduct a
28 review of the rules dealing with musculoskeletal disorders, codified as
29 WAC 296-62-05101 through 296-62-05176, as adopted on May 26, 2000, or
30 any new or amended rules dealing with musculoskeletal disorders that
31 are substantially the same as these rules, and the results of all pilot
32 demonstration projects arranged by the department to assess and make
33 recommendations, including but not limited to:

34 (1) Review of the literature regarding the scientific
35 justification for the rules, the expectation that the rules will reduce
36 musculoskeletal disorders, and the degree to which the rules reduce
37 injury;

1 (2) The accuracy of the cost-benefit analyses prepared for the
2 rules;

3 (3) The ease of understanding and complying with the rules,
4 identification of ambiguities and difficulties encountered during the
5 pilot demonstration projects to implement the rules, and
6 recommendations to maximize understanding and minimize ambiguities and
7 confusion for employers in complying with the rules;

8 (4) Ease of implementation of the rules based on the results of
9 the pilot demonstration projects and recommendations on how to
10 facilitate easier implementation and reduce costs while maintaining or
11 increasing the reduction of musculoskeletal disorders;

12 (5) Results of any pilot demonstration projects using alternative
13 methods to reduce musculoskeletal disorders and the cost-effectiveness
14 of each of the alternatives;

15 (6) Musculoskeletal disorder reductions as a result of the rules
16 and any alternatives to the rules that were the subject of a pilot
17 demonstration project;

18 (7) Costs to comply with the rules and any alternative methods to
19 reduce musculoskeletal disorders, based on the result of the pilot
20 demonstration projects; and

21 (8) Any other analysis, finding, or recommendation the committee
22 deems useful in assessing the enforcement of the rules.

23 The committee shall report its finding to the legislature by
24 December 1st of each calendar year and shall issue a complete report on
25 December 1, 2003.

26 Funding for this program will be taken from the reserves of the
27 medical aid fund that are in excess of actuarial needs.

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

30 (1) For the purposes of this section:

31 (a) "Ergonomics rules" means the rules dealing with
32 musculoskeletal disorders, codified as WAC 296-62-05101 through 296-62-
33 05176, as adopted on May 26, 2000, or any new or amended rules dealing
34 with musculoskeletal disorders that are substantially the same as these
35 rules;

1 (b) "Enforce" and "enforcement" includes, but is not limited to,
2 any action requiring an employer to comply with any provision of the
3 ergonomics rules, such as issuing citations or assessing penalties.

4 (2) The acceleration of ergonomics awareness education, the
5 completion of pilot demonstration projects, and the completion of the
6 legislative review of the ergonomics rules are conditions precedent to
7 the enforcement of any ergonomics rules. Therefore, the department
8 shall not enforce the ergonomics rules until at least six months after
9 the completion of the requirements of this section:

10 (a) The department accelerates its ergonomics awareness education
11 program, as described in section 2 of this act;

12 (b) The participants complete the pilot demonstration projects, as
13 described in section 2 of this act. Pilot demonstration projects for
14 each of the industries initially required to come into compliance with
15 the rules shall include a representative sample of smaller and larger
16 employers in each industry, who volunteer to participate and who shall
17 not be subject to any enforcement action as a result of the project.
18 Pilot demonstration projects shall provide a comprehensive assessment
19 of the ergonomics rules and alternatives to the rules: (i) to determine
20 the cost to employers, the ease of compliance, and the extent of injury
21 reduction achieved; and (ii) to identify ambiguities in the rules;

22 (c) The governor's blue ribbon panel of independent experts
23 consults with small business organizations prior to completing its
24 assessment of these rules and determining that: (i) The rule
25 requirements are understandable; (ii) the proposed enforcement policies
26 and procedures are fair and consistent; (iii) effective educational
27 materials are widely available; and (iv) pilot demonstration projects
28 are successful;

29 (d) The joint legislative audit and review committee completes its
30 review of the ergonomics rules, the ergonomics awareness education
31 program, and the pilot demonstration projects, and issues the complete
32 report of its findings and recommendations to the legislature, also as
33 described in section 3 of this act on December 1, 2003. The committee
34 may contract with a private entity to conduct the performance review.
35 The committee shall consider input from the house commerce and labor
36 committee, the senate labor, commerce, and financial institutions
37 committee, and the WISHA advisory committee established under RCW
38 49.17.055. The findings and recommendations shall include, but not be

1 limited to: (i) a review of the scientific literature justifying the
2 ergonomics rules; (ii) a determination of the actual costs and benefits
3 of the rules; (iii) an assessment of the ease of understanding,
4 compliance with, and implementation of the rules; (iv) an
5 identification of ambiguities in the rules; (v) a determination of
6 whether or not hazard or injury reduction was achieved; and (vi) a
7 comparison of alternative methods of addressing workplace
8 musculoskeletal disorders; and

9 (e) The department, by rule, or the legislature, by statute, has
10 resolved ambiguities in the rules identified in the joint legislative
11 audit and review committee's findings and recommendations.

12 NEW SECTION. **Sec. 5.** (1) The director, in consultation with the
13 WISHA advisory committee, shall establish a program to provide safety
14 and health impact grants to prevent injuries and illnesses, save lives,
15 and educate Washington employees and employers about work place hazards
16 and safe work place practices. The intent of sections 5 through 11 of
17 this act is to benefit, in the broadest sense possible, Washington
18 workers and employers, especially those who are in small business and
19 may lack the injury and illness prevention resources that larger
20 companies may possess. The department may use appropriated industrial
21 insurance funds to accomplish the purpose of sections 5 through 11 of
22 this act. Funding for this program will be taken from the reserves of
23 the medical aid fund that are in excess of actuarial needs.

24 (2) Using a competitive application process, the department shall
25 award up to five million dollars per year in safety and health impact
26 grants to trade associations, business associations, employers,
27 employee organizations, labor unions, and groups of employees. The
28 grants may include: (a) Education and training grants to implement
29 safety and health and to provide practical information, curricula,
30 materials, and methods intended for use by employers and employees in
31 reducing work place hazards; (b) technical innovation grants to develop
32 engineering and other technical solutions to injury and illness
33 problems; or (c) best practice grants for the application of hazard
34 control. The department shall attempt to ensure that best practice
35 grants, in particular, are adequately represented in the final awarding
36 of grants. In addition, the department shall make reasonable efforts
37 to ensure that not less than twenty percent of the grant funds are used

1 to assist small employers and employees in small businesses to improve
2 safety and health in small firms.

3 (3) Applicants for grants may form partnerships with educational
4 institutions and other organizations. Applicants for grants may form
5 partnerships with self-insured employers if the product of the grant
6 will significantly benefit employees and employers who belong to the
7 state industrial insurance fund.

8 (4) Any materials, designs, or equipment developed under these
9 grants will be in the public domain and shall not be copyrighted or
10 patented. Any materials or designs developed under these grants shall
11 be provided to the department at no charge as a condition of grant
12 receipt.

13 (5) Grants shall not be used to support or develop specific
14 legislative or regulatory initiatives.

15 (6) The department shall not use information contained in a grant
16 application for inspection activity or to establish a recognized hazard
17 for enforcement or citation purposes. The department shall not use the
18 results of a grant to establish that the grantee is subject to citation
19 or penalty for violation of a safety and health rule.

20 (7) All grants shall contain an accountability component that
21 shall evaluate the impact on work place safety with results that are
22 reported back to the safety and health impact grant review committee.
23 The department shall cooperate in providing available data required to
24 assist the grant recipients in measuring the impact.

25 (8) In order to encourage the broadest level of participation, no
26 grant application shall be approved that proposes work that cannot be
27 completed during the current application year or biennium. Applicants
28 that seek additional funding in subsequent years will be eligible to
29 submit new applications only if they have successfully completed the
30 work for which they were previously funded, and these new applications
31 will compete with all other applicants.

32 NEW SECTION. **Sec. 6.** (1) The director shall appoint a safety and
33 health impact grant review committee that will be a subcommittee of the
34 WISHA advisory committee. The review committee is composed of nine
35 members: Four members representing employees, each appointed from a
36 list of at least three names per position, submitted by recognized
37 statewide organizations of employees; four members representing

1 employers, each appointed from a list of at least three names per
2 position, submitted by recognized statewide organizations of employers;
3 and one ex officio member, without a vote, who shall represent the
4 department. The committee chair shall be chosen by the review
5 committee and shall alternate between business and labor. The
6 committee members shall serve three-year renewable terms.

7 (2) Business and labor members of the safety and health impact
8 grant review committee are entitled to expenses as provided under RCW
9 43.03.050 and 43.03.060.

10 (3) The safety and health impact grant review committee shall:

11 (a) Prepare requests for proposals which shall include specific
12 criteria and the weight to be given to each of the criteria in awarding
13 grants;

14 (b) Receive, review, and process grant applications;

15 (c) Identify, by two-thirds majority vote, grant applications that
16 merit funding and forward those applications to the legislative safety
17 and health impact grant review task force and the director;

18 (d) Identify, by two-thirds majority vote, funded grants that meet
19 criteria for suspension or revocation and forward those grants to the
20 director; and

21 (e) Provide written notification to those grant applicants that do
22 not merit funding explaining the reasons for denial.

23 NEW SECTION. **Sec. 7.** A legislative safety and health impact
24 grant review task force is hereby created. The legislative task force
25 shall consist of one member from each caucus of the senate labor,
26 commerce and financial institutions committee, appointed by the
27 president of the senate, and one member from each caucus of the house
28 commerce and labor committee, appointed by the co-speakers of the house
29 of representatives. The legislative task force shall review the safety
30 and health impact grant review committee's recommendations, and forward
31 grant applications that the task force recommends for funding to the
32 director.

33 NEW SECTION. **Sec. 8.** (1) The safety and health impact grant
34 review committee, in cooperation with the director, shall develop grant
35 application procedures and approval criteria. The director shall
36 ensure the proper administrative support to successfully monitor grant

1 recipients for compliance with grant criteria and all other procedures
2 under the grant program. The director in cooperation with the safety
3 and health impact grant review committee shall implement procedures and
4 criteria for grant approval, including procedures for suspension or
5 revocation of grants to recipients failing to comply with grant
6 criteria established under the authority of this section.

7 (2) The director shall approve only those grant applications and
8 their recommended acceptance conditions as forwarded by the safety and
9 health impact grant review committee, unless the director has a
10 compelling and substantive reason to reject an application, whereupon
11 the director shall provide written explanation for the denial to the
12 review committee. The safety and health impact grant review committee
13 shall review any grant applications rejected by the director and may
14 advise the director to reconsider. The director shall consider the
15 advice, if given, and shall approve the grant application with any
16 conditions presented by the safety and health impact grant review
17 committee. The director may reject that advice only for a compelling
18 and substantive reason. If the director rejects that advice, the
19 safety and health impact grant review committee may refer the
20 application to the WISHA advisory committee. The WISHA advisory
21 committee shall review the application and may advise the director to
22 reconsider.

23 (3) The director may revoke or suspend an issued grant if advised
24 by the safety and health impact grant review committee that the
25 recipient is not in compliance with grant criteria or procedures. The
26 director may suspend an issued grant without the advice of the safety
27 and health impact grant review committee only for a compelling and
28 substantive reason and the suspension recommendation shall be presented
29 to the safety and health impact grant review committee for its
30 consideration.

31 NEW SECTION. **Sec. 9.** For purposes of the 2001-2003 time frame,
32 the director shall approve one grant application of up to one million
33 dollars per year, and its recommended acceptance conditions as
34 forwarded by the safety and health impact grant review committee, that
35 is selected by the employee representatives of the review committee,
36 unless the director has a compelling and substantive reason to reject
37 the application, whereupon the director shall provide written

1 explanation for the denial to the review committee. This grant shall
2 be above and beyond the funding authorized in section 5(2) of this act.
3 The entire review committee, by the normal two-thirds vote, shall
4 forward such a grant proposal if the grant meets all other criteria and
5 accountability requirements. The specified time frame in this section
6 shall be determinative for meeting the grant duration requirements in
7 section 5(8) of this act.

8 NEW SECTION. **Sec. 10.** The department and the safety and health
9 impact grant review committee will present an annual review regarding
10 the activities of the safety and health impact grant program to the
11 WISHA advisory committee, the workers' compensation advisory committee,
12 and make it available to the appropriate standing committees of the
13 legislature. Based on a recommendation of the WISHA advisory
14 committee, the workers' compensation advisory committee shall make a
15 biennial recommendation to the director concerning an appropriate
16 budget for the program and the maximum amount of individual grant
17 awards.

18 NEW SECTION. **Sec. 11.** The director and representatives from the
19 WISHA advisory committee shall perform a comprehensive review of the
20 grant program which shall include, but not be limited to, reported
21 outcomes, injury reduction, and safety awareness and shall issue a
22 report to the legislature by December 31, 2004.

23 NEW SECTION. **Sec. 12.** The following acts or parts of acts, as
24 now existing or hereafter amended, are each repealed, effective July 1,
25 2005:

- 26 (1) Section 2 of this act;
- 27 (2) Section 3 of this act;
- 28 (3) Section 5 of this act;
- 29 (4) Section 6 of this act;
- 30 (5) Section 7 of this act;
- 31 (6) Section 8 of this act;
- 32 (7) Section 9 of this act;
- 33 (8) Section 10 of this act; and
- 34 (9) Section 11 of this act.

1 NEW SECTION. **Sec. 13.** Sections 5 through 12 of this act are each
2 added to chapter 49.17 RCW.

3 NEW SECTION. **Sec. 14.** A new section is added to chapter 49.17
4 RCW to read as follows:

5 If the validity of the rules dealing with musculoskeletal
6 disorders, codified as WAC 296-62-05101 through 296-62-05176, as
7 adopted on May 26, 2000, or any new or amended rules dealing with
8 musculoskeletal disorders that are substantially the same as these
9 rules is challenged, after the petitioner has identified the defects in
10 the rules, the burden of going forward with the evidence is on the
11 department.

12 NEW SECTION. **Sec. 15.** A new section is added to chapter 49.17
13 RCW to read as follows:

14 Nothing in this act shall be construed in any manner to indicate
15 that the rules dealing with musculoskeletal disorders, codified as WAC
16 296-62-05101 through 296-62-05176, as adopted on May 26, 2000, or any
17 new or amended rules dealing with musculoskeletal disorders that are
18 substantially the same as these rules are required by, or are
19 consistent with, chapters 34.05 and 49.17 RCW, or any other law.

20 NEW SECTION. **Sec. 16.** A new section is added to chapter 49.17
21 RCW to read as follows:

22 A petition for judicial review of the rules dealing with
23 musculoskeletal disorders, codified as WAC 296-62-05101 through 296-62-
24 05176, as adopted on May 26, 2000, or any new or amended rules dealing
25 with musculoskeletal disorders that are substantially the same as these
26 rules may be filed at any time, except that no action based upon RCW
27 34.05.375 may be maintained to contest the validity of the rules unless
28 it is commenced within two years after the department begins
29 enforcement of the rules.

30 NEW SECTION. **Sec. 17.** Sections 1 through 4 of this act are
31 necessary for the immediate preservation of the public peace, health,

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1 or safety, or support of the state government and its existing public
2 institutions, and take effect immediately."

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