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**SUBSTITUTE HOUSE BILL 3255**

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**State of Washington**

**60th Legislature**

**2008 Regular Session**

**By** House Commerce & Labor (originally sponsored by Representatives Wood, Conway, and Ormsby; by request of Department of Labor & Industries)

READ FIRST TIME 02/05/08.

1 AN ACT Relating to workers' compensation coverage for work  
2 performed outside the state of Washington; and amending RCW 51.12.120.

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

4 **Sec. 1.** RCW 51.12.120 and 1999 c 394 s 1 are each amended to read  
5 as follows:

6 (1) If a worker, while working outside the territorial limits of  
7 this state, suffers an injury on account of which he or she, or his or  
8 her beneficiaries, would have been entitled to compensation under this  
9 title had the injury occurred within this state, the worker, or his or  
10 her beneficiaries, shall be entitled to compensation under this title  
11 if at the time of the injury:

12 (a) His or her employment is principally localized in this state;  
13 or

14 (b) He or she is working under a contract of hire made in this  
15 state for employment not principally localized in any state; or

16 (c) He or she is working under a contract of hire made in this  
17 state for employment principally localized in another state whose  
18 workers' compensation law is not applicable to his or her employer; or

1 (d) He or she is working under a contract of hire made in this  
2 state for employment outside the United States and Canada.

3 (2) The payment or award of compensation or other recoveries,  
4 including settlement proceeds, under the workers' compensation law of  
5 another state, territory, province, or foreign nation to a worker or  
6 his or her beneficiaries otherwise entitled on account of such injury  
7 to compensation under this title shall not be a bar to a claim for  
8 compensation under this title if that claim under this title is timely  
9 filed. If compensation is paid or awarded under this title, the total  
10 amount of compensation or other recoveries, including settlement  
11 proceeds, paid or awarded the worker or beneficiary under such other  
12 workers' compensation law shall be credited against the compensation  
13 due the worker or beneficiary under this title.

14 (3)(a) An employer not domiciled in this state who is employing  
15 workers in this state in work for which the employer must be registered  
16 under chapter 18.27 RCW or licensed under chapter 19.28 RCW, or  
17 prequalified under RCW 47.28.070, must secure the payment of  
18 compensation under this title by:

19 (i) Insuring the employer's workers' compensation obligation under  
20 this title with the department;

21 (ii) Being qualified as a self-insurer under this title; or

22 (iii) For employers domiciled in a state or province of Canada  
23 subject to an agreement entered into under subsection (7) of this  
24 section, as permitted by the agreement, filing with the department a  
25 certificate of coverage issued by the agency that administers the  
26 workers' compensation law in the employer's state or province of  
27 domicile certifying that the employer has secured the payment of  
28 compensation under the other state's or province's workers'  
29 compensation law.

30 (b) The department shall adopt rules to implement this subsection.

31 (4) If a worker or beneficiary is entitled to compensation under  
32 this title by reason of an injury sustained in this state while in the  
33 employ of an employer who is domiciled in another state or province of  
34 Canada and the employer:

35 (a) Is not subject to subsection (3) of this section and has  
36 neither opened an account with the department nor qualified as a self-  
37 insurer under this title, the employer or his or her insurance carrier  
38 shall file with the director a certificate issued by the agency that

1 administers the workers' compensation law in the state of the  
2 employer's domicile, certifying that the employer has secured the  
3 payment of compensation under the workers' compensation law of the  
4 other state and that with respect to the injury the worker or  
5 beneficiary is entitled to the benefits provided under the other  
6 state's law.

7 (b) Has filed a certificate under subsection (3)(a)(iii) of this  
8 section or (a) of this subsection (4):

9 (i) The filing of the certificate constitutes appointment by the  
10 employer or his or her insurance carrier of the director as its agent  
11 for acceptance of the service of process in any proceeding brought by  
12 any claimant to enforce rights under this title;

13 (ii) The director shall send to such employer or his or her  
14 insurance carrier, by registered or certified mail to the address shown  
15 on such certificate, a true copy of any notice of claim or other  
16 process served on the director by the claimant in any proceeding  
17 brought to enforce rights under this title;

18 (iii) If the employer is a self-insurer under the workers'  
19 compensation law of the other state or province of Canada, the employer  
20 shall, upon submission of evidence or security, satisfactory to the  
21 director, of his or her ability to meet his or her liability to the  
22 claimant under this title, be deemed to be a qualified self-insurer  
23 under this title; and

24 (iv) If the employer's liability under the workers' compensation  
25 law of the other state or province of Canada is insured:

26 (A) The employer's carrier, as to such claimant only, shall be  
27 deemed to be subject to this title. However, unless the insurer's  
28 contract with the employer requires the insurer to pay an amount  
29 equivalent to the compensation benefits provided by this title, the  
30 insurer's liability for compensation shall not exceed the insurer's  
31 liability under the workers' compensation law of the other state or  
32 province; and

33 (B) If the total amount for which the employer's insurer is liable  
34 under (b)(iv)(A) of this subsection is less than the total of the  
35 compensation to which the claimant is entitled under this title, the  
36 director may require the employer to file security satisfactory to the  
37 director to secure the payment of compensation under this title.

1 (c) If subject to subsection (3) of this section, has not complied  
2 with subsection (3) of this section or, if not subject to subsection  
3 (3) of this section, has neither qualified as a self-insurer nor  
4 secured insurance coverage under the workers' compensation law of  
5 another state or province of Canada, the claimant shall be paid  
6 compensation by the department and the employer shall have the same  
7 rights and obligations, and is subject to the same penalties, as other  
8 employers subject to this title.

9 (5) As used in this section:

10 (a) A person's employment is principally localized in this or  
11 another state when: (i) His or her employer has a place of business in  
12 this or the other state and he or she regularly works at or from the  
13 place of business; or (ii) if (a)(i) of this subsection is not  
14 applicable, he or she is domiciled in and spends a substantial part of  
15 his or her working time in the service of his or her employer in this  
16 or the other state;

17 (b) "Workers' compensation law" includes "occupational disease law"  
18 for the purposes of this section.

19 (6) A worker whose duties require him or her to travel regularly in  
20 the service of his or her employer in this and one or more other states  
21 may agree in writing with his or her employer that his or her  
22 employment is principally localized in this or another state, and,  
23 unless the other state refuses jurisdiction, the agreement shall govern  
24 as to any injury occurring after the effective date of the agreement.

25 (7) The director is authorized to enter into agreements with the  
26 appropriate agencies of other states and provinces of Canada that  
27 administer their workers' compensation law with respect to conflicts of  
28 jurisdiction and the assumption of jurisdiction in cases where the  
29 contract of employment arises in one state or province and the injury  
30 occurs in another. If the other state's or province's law requires  
31 Washington employers to secure the payment of compensation under the  
32 other state's or province's workers' compensation laws for work  
33 performed in that state or province, then employers domiciled in that  
34 state or province must purchase compensation covering their workers  
35 engaged in that work in this state under this state's industrial  
36 insurance law. When an agreement under this subsection has been  
37 executed and adopted as a rule of the department under chapter 34.05

1 RCW, it binds all employers and workers subject to this title and the  
2 jurisdiction of this title is governed by this rule.

3 (8) Washington employers who are not self-insured under chapter  
4 51.14 RCW shall obtain workers' compensation coverage from the state  
5 fund for temporary and incidental work performed on jobs or at jobsites  
6 in another state by their Washington workers. The department is  
7 authorized to adopt rules governing premium liability and reporting  
8 requirements for hours of work in excess of temporary and incidental as  
9 defined in this chapter.

10 (9) "Temporary and incidental" means work performed by Washington  
11 employers on jobs or at jobsites in another state for thirty or fewer  
12 consecutive or nonconsecutive full or partial days within a calendar  
13 year. Temporary and incidental days are considered on a per state  
14 basis.

15 (10) By December 1, 2011, the department shall report to the  
16 workers' compensation advisory committee on the effect of this act on  
17 the revenue and costs to the state fund.

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