

---

ENGROSSED HOUSE BILL 1352

---

State of Washington

52nd Legislature

1991 Regular Session

By Representatives Jones, Vance, Cole, Wynne, Moyer, Miller, Paris, Ballard, May, Basich, Forner and Silver; by request of Department of Labor & Industries.

Read first time January 28, 1991. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to confidential information acquired by the  
2 department of labor and industries through research, experiments,  
3 demonstrations, and employer-requested services; and amending RCW  
4 49.17.210, 49.17.250, and 51.36.060.

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

6 **Sec. 1.** RCW 49.17.210 and 1973 c 80 s 21 are each amended to read  
7 as follows:

8 The director is authorized to conduct, either directly or by grant  
9 or contract, research, experiments, and demonstrations as may be of aid  
10 and assistance in the furtherance of the objects and purposes of this  
11 chapter. Employer identity, employee identity, and personal  
12 identifiers of voluntary participants in research, experiments, and  
13 demonstrations shall be deemed confidential and shall not be released  
14 or open to public inspection. Information obtained from such voluntary  
15 activities shall not be deemed to be medical information for the

1 purpose of RCW 51.36.060 and shall not be released. The director, in  
2 his or her discretion, is authorized to grant a variance from any rule  
3 or regulation or portion thereof, whenever he or she determines that  
4 such variance is necessary to permit an employer to participate in an  
5 experiment approved by the director, (~~which~~) and the experiment is  
6 designed to demonstrate or validate new and improved techniques to  
7 safeguard the health or safety of employees. Any such variance shall  
8 require that all due regard be given to the health and safety of all  
9 employees participating in any experiment.

10 **Sec. 2.** RCW 49.17.250 and 1973 c 80 s 25 are each amended to read  
11 as follows:

12 (1) In carrying out (~~his~~) the responsibilities for the  
13 development of a voluntary compliance program under the authority of  
14 RCW 49.17.050(8) and the rendering of advisory and consultative  
15 services to employers, the director may grant an employer's application  
16 for advice and consultation, and for the purpose of affording such  
17 consultation and advice visit the employer's work place. Such  
18 consultation and advice shall be limited to the matters specified in  
19 the request affecting the interpretation and applicability of safety  
20 and health standards to the conditions, structures, machines,  
21 equipment, apparatus, devices, materials, methods, means, and practices  
22 in the employer's work place. The director in granting any requests  
23 for consultative or advisory service may provide for an alternative  
24 means of affording consultation and advice other than on-site  
25 consultation.

26 (2) The director, or (~~his~~) an authorized representative, (~~may~~)  
27 will make recommendations regarding the elimination of any hazards  
28 disclosed within the scope of the on-site consultation. No visit to an  
29 employer's work place shall be regarded as an inspection or

1 investigation under the authority of this chapter, and no notices or  
2 citations shall be issued, nor, shall any civil penalties be assessed  
3 upon such visit, nor shall any authorized representative of the  
4 director designated to render advice and consult with employers under  
5 the voluntary compliance program have any enforcement authority:  
6 PROVIDED, That in the event an on-site visit discloses a serious  
7 violation of a health and safety standard as defined in RCW  
8 49.17.180(6), and the hazard of such violation is either not abated by  
9 the cooperative action of the employer, or, is not subject to being  
10 satisfactorily abated by the cooperative action of the employer, the  
11 director shall either invoke the administrative restraining authority  
12 provided in RCW 49.17.130 or seek the issuance of injunctive process  
13 under the authority of RCW 49.17.170 or invoke both such remedies.

14 (3) Nothing in this section shall be construed as providing  
15 immunity to any employer who has made application for consultative  
16 services during the pendency of the granting of such application from  
17 inspections or investigations conducted under RCW 49.17.070 or any  
18 inspection conducted as a result of a complaint, nor immunity from  
19 inspections under RCW 49.17.070 or inspections resulting from a  
20 complaint subsequent to the conclusion of the consultative period.  
21 This section shall not be construed as requiring an inspection under  
22 RCW 49.17.070 of any work place which has been visited for consultative  
23 purposes. However, in the event of a subsequent inspection, the  
24 director, or ((his)) an authorized representative, may in his or her  
25 discretion take into consideration any information obtained during the  
26 consultation visit of that work place in determining the nature of an  
27 alleged violation and the amount of penalties to be assessed, if any.  
28 Such rules and regulations to be promulgated pursuant to this section  
29 shall provide that in all instances of serious violations as defined in  
30 RCW 49.17.180(6) which are disclosed in any consultative period, shall

1 be corrected within a specified period of time at the expiration of  
2 which an inspection will be conducted under the authority of RCW  
3 49.17.070. All employers requesting consultative services shall be  
4 advised of the provisions of this section and the rules adopted by the  
5 director relating to the voluntary compliance program. Information  
6 obtained by the department as a result of employer-requested  
7 consultation and training services shall be deemed confidential and  
8 shall not be open to public inspection. Within thirty days of receipt,  
9 the employer shall make voluntary services reports available to  
10 employees or their representatives for review. The director may  
11 provide by rule for the frequency, manner, and method of the rendering  
12 of consultative services to employers, and for the scheduling and  
13 priorities in granting applications consistent with the availability of  
14 personnel, and in such a manner as not to jeopardize the enforcement  
15 requirements of this chapter.

16 **Sec. 3.** RCW 51.36.060 and 1989 c 12 s 17 are each amended to read  
17 as follows:

18 Physicians examining or attending injured workers under this title  
19 shall comply with rules and regulations adopted by the director, and  
20 shall make such reports as may be requested by the department or self-  
21 insurer upon the condition or treatment of any such worker, or upon any  
22 other matters concerning such workers in their care. Except under RCW  
23 49.17.210 and 49.17.250, all medical information in the possession or  
24 control of any person and relevant to the particular injury in the  
25 opinion of the department pertaining to any worker whose injury or  
26 occupational disease is the basis of a claim under this title shall be  
27 made available at any stage of the proceedings to the employer, the  
28 claimant's representative, and the department upon request, and no  
29 person shall incur any legal liability by reason of releasing such

1 information.