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**SENATE BILL 5604**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senators Keiser, Conway, and C. Wilson; by request of Department of Labor & Industries

AN ACT Relating to adding references to contractor licensing laws in workers' compensation, public works, and prevailing wage statutes; and amending RCW 39.04.350, 39.06.020, 39.12.050, 39.12.055, 39.12.065, 39.12.100, 51.08.070, 51.08.180, 51.08.181, 51.12.070, 51.12.120, 51.16.070, and 51.48.022.

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

**Sec.**  RCW 39.04.350 and 2020 c 255 s 2 are each amended to read as follows:

(1) Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:

(a) At the time of bid submittal, ((~~have a certificate of registration in compliance with chapter 18.27 RCW~~)) be registered or licensed as may be required by the laws of this state including contractor registration in compliance with chapter 18.27 RCW, and contractor licensing in compliance with chapter 18.106 RCW;

(b) Have a current state unified business identifier number;

(c) If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW;

(d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);

(e) If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation;

(f) Have received training on the requirements related to public works and prevailing wage under this chapter and chapter 39.12 RCW. The bidder must designate a person or persons to be trained on these requirements. The training must be provided by the department of labor and industries or by a training provider whose curriculum is approved by the department. The department, in consultation with the prevailing wage advisory committee, must determine the length of the training. Bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection. The department of labor and industries must keep records of entities that have satisfied the training requirement or are exempt and make the records available on its website. Responsible parties may rely on the records made available by the department regarding satisfaction of the training requirement or exemption; and

(g) Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.

(2) Before award of a public works contract, a bidder shall submit to the contracting agency a signed statement in accordance with chapter 5.50 RCW verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria requirement of subsection (1)(g) of this section. A contracting agency may award a contract in reasonable reliance upon such a sworn statement.

(3) In addition to the bidder responsibility criteria in subsection (1) of this section, the state or municipality may adopt relevant supplemental criteria for determining bidder responsibility applicable to a particular project which the bidder must meet.

(a) Supplemental criteria for determining bidder responsibility, including the basis for evaluation and the deadline for appealing a determination that a bidder is not responsible, must be provided in the invitation to bid or bidding documents.

(b) In a timely manner before the bid submittal deadline, a potential bidder may request that the state or municipality modify the supplemental criteria. The state or municipality must evaluate the information submitted by the potential bidder and respond before the bid submittal deadline. If the evaluation results in a change of the criteria, the state or municipality must issue an addendum to the bidding documents identifying the new criteria.

(c) If the bidder fails to supply information requested concerning responsibility within the time and manner specified in the bid documents, the state or municipality may base its determination of responsibility upon any available information related to the supplemental criteria or may find the bidder not responsible.

(d) If the state or municipality determines a bidder to be not responsible, the state or municipality must provide, in writing, the reasons for the determination. The bidder may appeal the determination within the time period specified in the bidding documents by presenting additional information to the state or municipality. The state or municipality must consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the state or municipality may not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

(e) If the bidder has a history of receiving monetary penalties for not achieving the apprentice utilization requirements pursuant to RCW 39.04.320, or is habitual in utilizing the good faith effort exception process, the bidder must submit an apprenticeship utilization plan within ten business days immediately following the notice to proceed date.

(4) The capital projects advisory review board created in RCW 39.10.220 shall develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility criteria. The guidelines must be posted on the board's website.

**Sec.**  RCW 39.06.020 and 2007 c 133 s 3 are each amended to read as follows:

A public works contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses an electrical contractor license, if required by chapter 19.28 RCW, ((~~or~~)) an elevator contractor license, if required by chapter 70.87 RCW, or a plumbing contractor license if required by chapter 18.106 RCW. This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract of every tier.

**Sec.**  RCW 39.12.050 and 2019 c 242 s 3 are each amended to read as follows:

(1) Any contractor or subcontractor who files a false statement or fails to file any statement or record required to be filed or fails to post a document required to be posted under this chapter and the rules adopted under this chapter, shall, after a determination to that effect has been issued by the director after hearing under chapter 34.05 RCW, forfeit as a civil penalty the sum of five hundred dollars for each false filing or failure to file or post, and shall not be permitted to bid, or have a bid considered, on any public works contract until the penalty has been paid in full to the director. The civil penalty under this subsection does not apply to a violation determined by the director to be an inadvertent filing or reporting error. The burden of proving, by a preponderance of the evidence, that an error is inadvertent rests with the contractor or subcontractor charged with the error. Civil penalties shall be deposited in the public works administration account.

To the extent that a contractor or subcontractor has not paid wages at the rate due pursuant to RCW 39.12.020, and a finding to that effect has been made as provided by this subsection, such unpaid wages constitute a lien against the bonds and retainage as provided in RCW 18.27.040, 18.106.410, 19.28.041, 39.08.010, and 60.28.011.

(2) If a contractor or subcontractor is found to have violated the provisions of subsection (1) of this section for a second time within a five year period, the contractor or subcontractor is subject to the sanctions prescribed in subsection (1) of this section and shall not be allowed to bid on any public works contract for one year. The one year period runs from the date of notice by the director of the determination of noncompliance. When an appeal is taken from the director's determination, the one year period commences from the date the notice of violation becomes final.

The director shall issue his or her findings that a contractor or subcontractor has violated the provisions of this subsection after a hearing held subject to the provisions of chapter 34.05 RCW, unless a notice of violation is not timely appealed. A notice of violation not timely appealed is final and binding, and not subject to further appeal.

**Sec.**  RCW 39.12.055 and 2009 c 197 s 3 are each amended to read as follows:

A contractor shall not be allowed to bid on any public works contract for one year from the date of a final determination that the contractor has committed any combination of two of the following violations or infractions within a five‑year period:

(1) Violated RCW 51.48.020(1) or 51.48.103;

(2) Committed an infraction or violation under chapter 18.27 or 18.106 RCW for performing work as an unregistered or unlicensed contractor; or

(3) Determined to be out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW.

**Sec.**  RCW 39.12.065 and 2019 c 242 s 4 are each amended to read as follows:

(1) Upon complaint by an interested party, the director of labor and industries shall cause an investigation to be made to determine whether there has been compliance with this chapter and the rules adopted hereunder, and if the investigation indicates that a violation may have occurred, the department of labor and industries may issue a notice of violation for unpaid wages, penalties, and interest on all wages owed at one percent per month. A hearing shall be held following a timely appeal of the notice of violation in accordance with chapter 34.05 RCW. The director shall issue a written determination including his or her findings after the hearing unless a notice of violation is not timely appealed. A notice of violation not timely appealed is final and binding, and not subject to further appeal. A judicial appeal from the director's determination may be taken in accordance with chapter 34.05 RCW, with the prevailing party entitled to recover reasonable costs and attorneys' fees.

A complaint concerning nonpayment of the prevailing rate of wage shall be filed with the department of labor and industries no later than sixty days from the acceptance date of the public works project. The department may not charge a contractor or subcontractor with a violation of this section when responding to a complaint filed after the sixty-day limit. The failure to timely file such a complaint does not prohibit the department from investigating the matter and recovering unpaid wages for the worker(s) within two years from the acceptance of the public works contract. The department may not investigate or recover unpaid wages if the complaint is filed after two years from the acceptance of a public works contract. The failure to timely file such a complaint also does not prohibit a claimant from pursuing a private right of action against a contractor or subcontractor for unpaid prevailing wages. The remedy provided by this section is not exclusive and is concurrent with any other remedy provided by law.

(2) To the extent that a contractor or subcontractor has not paid the prevailing rate of wage under a determination issued as provided in subsection (1) of this section, the director shall notify the agency awarding the public works contract of the amount of the violation found, and the awarding agency shall withhold, or in the case of a bond, the director shall proceed against the bond in accordance with the applicable statute to recover, such amount from the following sources in the following order of priority until the total of such amount is withheld:

(a) The retainage or bond in lieu of retainage as provided in RCW 60.28.011;

(b) If the claimant was employed by the contractor or subcontractor on the public works project, the bond filed by the contractor or subcontractor with the department of labor and industries as provided in RCW 18.27.040, 18.106.410, and 19.28.041;

(c) A surety bond, or at the contractor's or subcontractor's option an escrow account, running to the director in the amount of the violation found; and

(d) That portion of the progress payments which is properly allocable to the contractor or subcontractor who is found to be in violation of this chapter. Under no circumstances shall any portion of the progress payments be withheld that are properly allocable to a contractor, subcontractor, or supplier, that is not found to be in violation of this chapter.

The amount withheld shall be released to the director to distribute in accordance with the director's determination.

(3) A contractor or subcontractor that is found, in accordance with subsection (1) of this section, to have violated the requirement to pay the prevailing rate of wage is subject to a civil penalty of not less than five thousand dollars or an amount equal to fifty percent of the total prevailing wage violation found on the contract, whichever is greater, interest on all wages owed at one percent per month, and is not permitted to bid, or have a bid considered, on any public works contract until such civil penalty has been paid in full to the director. If a contractor or subcontractor is found to have participated in a violation of the requirement to pay the prevailing rate of wage for a second time within a five-year period, the contractor or subcontractor is subject to the sanctions prescribed in this subsection and as an additional sanction is not allowed to bid on any public works contract for two years. Civil penalties shall be deposited in the public works administration account. If a previous or subsequent violation of a requirement to pay a prevailing rate of wage under federal or other state law is found against the contractor or subcontractor within five years from a violation under this section, the contractor or subcontractor shall not be allowed to bid on any public works contract for two years. The two-year period runs from the date of notice by the director of the determination of noncompliance. When an appeal is taken from the director's determination, the two-year period commences from the date the notice of violation becomes final. A contractor or subcontractor is not barred from bidding on any public works contract if the contractor or subcontractor relied upon written information from the department to pay a prevailing rate of wage that is later determined to be in violation of this chapter. The civil penalty and sanctions under this subsection do not apply to a violation determined by the director to be an inadvertent filing or reporting error. The burden of proving, by a preponderance of the evidence, that an error is inadvertent rests with the contractor or subcontractor charged with the error. To the extent that a contractor or subcontractor has not paid the prevailing wage rate under a determination issued as provided in subsection (1) of this section, the unpaid wages constitute a lien against the bonds and retainage as provided herein and in RCW 18.27.040, 18.106.410, 19.28.041, 39.08.010, and 60.28.011.

(4) The director may waive or reduce a penalty or additional sanction under this section including, but not limited to, when the director determines the contractor or subcontractor paid all wages and interest or there was an inadvertent filing or reporting error. The director may not waive or reduce interest. The department of labor and industries shall submit a report of the waivers made under this section, including a justification for any waiver made, upon request of an interested party.

(5) If, after the department of labor and industries initiates an investigation and before a notice of violation of unpaid wages, the contractor or subcontractor pays the unpaid wages identified in the investigation, interest on all wages owed at one percent per month, and penalties in the amount of one thousand dollars or twenty percent of the total prevailing wage violation determined by the department of labor and industries, whichever is greater, then the violation is considered resolved without further penalty under subsection (3) of this section.

(6) A contractor or subcontractor may only utilize the process outlined in subsection (5) of this section if the department of labor and industries has not issued a notice of violation that resulted in final judgment under this section against that contractor or subcontractor in the last five-year period. If a contractor or subcontractor utilizes the process outlined in subsection (5) of this section for a second time within a five-year period, the contractor or subcontractor is subject to the sanctions prescribed in subsection (3) of this section and may not be allowed to bid on any public works contract for two years.

**Sec.**  RCW 39.12.100 and 2009 c 63 s 1 are each amended to read as follows:

For the purposes of this chapter, an individual employed on a public works project is not considered to be a laborer, worker, or mechanic when:

(1) The individual has been and is free from control or direction over the performance of the service, both under the contract of service and in fact;

(2) The service is either outside the usual course of business for the contractor or contractors for whom the individual performs services, or the service is performed outside all of the places of business of the enterprise for which the individual performs services, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;

(3) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes other than that furnished by the employer for which the business has contracted to furnish services;

(4) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting;

(5) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract of service, the individual has an active and valid certificate of registration with the department of revenue, and an active and valid account with any other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington;

(6) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting; and

(7) On the effective date of the contract of service, if the nature of the work performed requires registration under chapter 18.27 RCW or licensure under chapter 18.106 or 19.28 RCW, the individual has ((~~a valid contractor registration pursuant to~~)) the contractor registration and contractor licenses required by the laws of this state including chapters 18.27 ((~~RCW or an electrical contractor license pursuant to chapter~~)), 18.106, and 19.28 RCW.

**Sec.**  RCW 51.08.070 and 2008 c 102 s 2 are each amended to read as follows:

"Employer" means any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while engaged in this state in any work covered by the provisions of this title, by way of trade or business, or who contracts with one or more workers, the essence of which is the personal labor of such worker or workers. Or as an exception to the definition of employer, persons or entities are not employers when they contract or agree to remunerate the services performed by an individual who meets the tests set forth in ((~~subsections (1) through (6) of~~)) RCW 51.08.195 (1) through (6) or the separate tests set forth in RCW 51.08.181 for work performed that requires registration under chapter 18.27 RCW or licensing under chapter 18.106 or 19.28 RCW.

**Sec.**  RCW 51.08.180 and 2008 c 102 s 3 are each amended to read as follows:

"Worker" means every person in this state who is engaged in the employment of an employer under this title, whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his or her personal labor for an employer under this title, whether by way of manual labor or otherwise, in the course of his or her employment, or as an exception to the definition of worker, a person is not a worker if he or she meets the tests set forth in ((~~subsections (1) through (6) of~~)) RCW 51.08.195 (1) through (6) or the separate tests set forth in RCW 51.08.181 for work performed that requires registration under chapter 18.27 RCW or licensing under chapter 18.106 or 19.28 RCW: PROVIDED, That a person is not a worker for the purpose of this title, with respect to his or her activities attendant to operating a truck which he or she owns, and which is leased to a common or contract carrier.

**Sec.**  RCW 51.08.181 and 2008 c 102 s 5 are each amended to read as follows:

For the purposes of this title, any individual performing services that require registration under chapter 18.27 RCW or licensing under chapter 18.106 or 19.28 RCW for remuneration under an independent contract is not a worker when:

(1) The individual has been, and will continue to be, free from control or direction over the performance of the service, both under the contract of service and in fact;

(2) The service is either outside the usual course of business for which the service is performed, or the service is performed outside all of the places of business of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;

(3) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes other than that furnished by the employer for which the business has contracted to furnish services;

(4) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting;

(5) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, the individual has an active and valid certificate of registration with the department of revenue, and an active and valid account with any other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington;

(6) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting; and

(7) On the effective date of the contract of service, the individual has a valid contractor registration pursuant to chapter 18.27 RCW, a plumbing contractor license pursuant to chapter 18.106 RCW, or an electrical contractor license pursuant to chapter 19.28 RCW.

**Sec.**  RCW 51.12.070 and 2014 c 193 s 1 are each amended to read as follows:

The provisions of this title apply to all work done by contract; the person, firm, or corporation who lets a contract for such work is responsible primarily and directly for all premiums upon the work, except as provided in subsection (2) of this section. The contractor and any subcontractor are subject to the provisions of this title and the person, firm, or corporation letting the contract is entitled to collect from the contractor the full amount payable in premiums and the contractor in turn is entitled to collect from the subcontractor his or her proportionate amount of the payment.

(1) For the purposes of this section, a contractor registered under chapter 18.27 RCW or licensed under chapter 18.106 or 19.28 RCW is not responsible for any premiums upon the work of any subcontractor if:

(a) The subcontractor is currently engaging in a business which is registered under chapter 18.27 RCW or licensed under chapter 18.106 or 19.28 RCW;

(b) The subcontractor has a principal place of business which would be eligible for a business deduction for internal revenue service tax purposes other than that furnished by the contractor for which the business has contracted to furnish services;

(c) The subcontractor maintains a separate set of books or records that reflect all items of income and expenses of the business;

(d) The subcontractor has contracted to perform:

(i) The work of a contractor as defined in RCW 18.27.010; ((~~or~~))

(ii) Plumbing work as described in chapter 18.106 RCW; or

(iii) The work of installing wires or equipment to convey electric current or installing apparatus to be operated by such current as it pertains to the electrical industry as described in chapter 19.28 RCW; and

(e) The subcontractor has an industrial insurance account in good standing with the department or is a self-insurer. For the purposes of this subsection (1)(e), a contractor may consider a subcontractor's account to be in good standing if, within a year prior to letting the contract or master service agreement, and at least once a year thereafter, the contractor has verified with the department that the account is in good standing and the contractor has not received written notice from the department that the subcontractor's account status has changed. Acceptable documentation of verification includes a department document which includes an issued date or a dated printout of information from the department's internet website showing a subcontractor's good standing. The department shall develop an approach to provide contractors with verification of the date of inquiries validating that the subcontractor's account is in good standing.

It is unlawful for any county, city, or town to issue a construction building permit to any person who has not submitted to the department an estimate of payroll and paid premium thereon as provided by chapter 51.16 RCW of this title or proof of qualification as a self-insurer.

(2) Nonemergency transportation brokers that operate as not-for-profit businesses are not liable for any premiums of a subcontractor if the provisions of subsection (1)(c) and (e) of this section are met throughout the term of the contract. For purposes of this section, nonemergency transportation brokers are those organizations or entities that contract with the state health care authority, or its successor, to arrange nonemergency transportation for qualified clients.

**Sec.**  RCW 51.12.120 and 2008 c 88 s 1 are each amended to read as follows:

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

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

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

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

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

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

(3)(a) An employer not domiciled in this state who is employing workers in this state in work for which the employer must be registered under chapter 18.27 RCW ((~~or~~)), licensed under chapter 18.106 RCW, licensed under chapter 19.28 RCW, or prequalified under RCW 47.28.070, must secure the payment of compensation under this title by:

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

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

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

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

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

(a) Is not subject to subsection (3) of this section and has neither opened an account with the department nor qualified as a self-insurer under this title, the employer or his or her insurance carrier shall file with the director a certificate issued by the agency that administers the workers' compensation law in the state of the employer's domicile, certifying that the employer has secured the payment of compensation under the workers' compensation law of the other state and that with respect to the injury the worker or beneficiary is entitled to the benefits provided under the other state's law.

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

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

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

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

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

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

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

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

(5) As used in this section:

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

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

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

(7) The director is authorized to enter into agreements with the appropriate agencies of other states and provinces of Canada that administer their workers' compensation law with respect to conflicts of jurisdiction and the assumption of jurisdiction in cases where the contract of employment arises in one state or province and the injury occurs in another. If the other state's or province's law requires Washington employers to secure the payment of compensation under the other state's or province's workers' compensation laws for work performed in that state or province, then employers domiciled in that state or province must purchase compensation covering their workers engaged in that work in this state under this state's industrial insurance law. When an agreement under this subsection has been executed and adopted as a rule of the department under chapter 34.05 RCW, it binds all employers and workers subject to this title and the jurisdiction of this title is governed by this rule.

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

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

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

**Sec.**  RCW 51.16.070 and 2008 c 120 s 5 are each amended to read as follows:

(1)(a) Every employer shall keep at his or her place of business a record of his or her employment from which the information needed by the department may be obtained and such record shall at all times be open to the inspection of the director, supervisor of industrial insurance, or the traveling auditors, agents, or assistants of the department, as provided in RCW 51.48.040.

(b) An employer who contracts with another person or entity for work subject to chapter 18.27, 18.106, or 19.28 RCW shall obtain and preserve a record of the unified business identifier account number for and the compensation paid to the person or entity performing the work. Failure to obtain or maintain the record is subject to RCW 39.06.010 and to a penalty under RCW 51.48.030.

(2) Information obtained from employing unit records under the provisions of this title shall be deemed confidential and shall not be open to public inspection (other than to public employees in the performance of their official duties), but any interested party shall be supplied with information from such records to the extent necessary for the proper presentation of the case in question: PROVIDED, That any employing unit may authorize inspection of its records by written consent.

**Sec.**  RCW 51.48.022 and 2009 c 196 s 1 are each amended to read as follows:

(1) In addition to the penalties provided by this chapter, an employer performing services that require registration under chapter 18.27 RCW or licensing under chapter 18.106 or 19.28 RCW who violates RCW 51.14.010 may be subject to a stop work order issued under this section.

(2) If the director determines after an investigation that an employer is in violation of RCW 51.14.010, the director may issue a stop work order against the employer requiring the cessation of business operations of the employer. Service of the order must be in accordance with subsection (3) of this section.

(3) When a stop work order is served on a worksite by posting a copy of the stop work order in a conspicuous location at the worksite, it is effective as to the employer's operations on that worksite. When a stop work order is served on the employer, the order is effective to all employer worksites for which the employer is not in compliance. Business operations of the employer must cease immediately upon service consistent with the stop work order. The order remains in effect until the director issues an order releasing the stop work order upon finding that the employer has come into compliance and has paid any premiums, penalties, and interest under this title or issues an order of conditional release pursuant to subsection (6) of this section.

(4) An employer who violates a stop work order is subject to a one thousand dollar penalty for each day not in compliance.

(5) An employer against whom a stop work order has been issued may request reconsideration from the department or may appeal to the board of industrial insurance appeals. The request must be made in writing to the department or the board within ten days of receiving the stop work order at the worksite or in person. If the department conducts a reconsideration, it must be concluded within ten days of receiving the request for reconsideration by the employer. The stop work order remains in effect during the period of reconsideration or appeal, unless the employer furnishes to the department a cash deposit or bond in the amount of five thousand dollars or one thousand dollars per covered worker identified, whichever is greater. At time of a final order upholding a stop work order, the bond or cash deposit will be seized and applied to the premium, penalty, and interest balance of that employer. In an appeal before the board, the appellant has the burden of proceeding with the evidence to establish a prima facie case for the relief sought in such appeal. RCW 51.52.080 through 51.52.106 govern appeals under this section. Further appeals taken from a final decision of the board under this section are governed by the provisions relating to judicial review of administrative decisions contained in RCW 34.05.510 through 34.05.598, and the department has the same right of review from the board's decisions as do employers.

(6) The director may issue an order of conditional release from the stop work order if the employer has complied with the coverage requirements of this title and agreed to pay premiums, penalties, and interest through a payment schedule. If the terms of the schedule are not met, the stop work order may be reinstated and the unpaid balance will become due.

(7) Stop work orders and penalties assessed under this chapter remain in effect against any successor corporation or business entity that has one or more of the same principals or officers as the employer against whom the stop work order was issued and which is engaged in the same or equivalent trade or activity.

(8) The department may adopt rules to carry out this section.

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