

# HOUSE BILL ANALYSIS

## HB 3083

**Brief Description:** Regulating the industrial insurance of employee leasing companies.

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**Sponsors:** Representatives Hickel and McMorris.

Hearing: February 4, 1998

### **BACKGROUND:**

Under Washington's industrial insurance law, all covered employers must insure their workers' compensation obligations either by having an account with the state fund operated by the Department of Labor and Industries or by being a qualified self-insured employer. An employer cannot exempt itself from this obligation by contract. If an employer is sued by the employer's employee because of a covered workplace accident or occupational disease, the employer is generally protected from liability by an "immunity" defense.

All state fund employers pay premiums to the department. The department is authorized by law to adopt a method for calculating premiums, classifying workers, and providing for a rating system.

Under the industrial insurance law, a temporary help company is considered the employer, for purposes of for reporting and paying premiums, of the workers it provides on a temporary or part-time basis to its customers. However, the customer is liable for payment of premiums if the temporary help company fails to pay. Temporary help companies maintain an industrial insurance account and pay premiums under various special classifications for temporary help workers, depending on the job to which the worker was assigned.

By rule, the department has established different requirements for an "employee leasing firm," defined as a business that provides workers on a long-term basis to another firm. An employee leasing firm may establish an account, but then must establish a subaccount for each client. The rates paid by the employee leasing firm are based on the combined experience of the client's own regular account and the client's subaccount established by the employee leasing firm. Under this arrangement, as with temporary help companies, the department views the client as the "employer" with ultimate responsibility for premiums and

compliance with the industrial insurance laws.

**SUMMARY OF BILL:**

An employee leasing company is the sole employer of the employees it leases to a customer if the employee leasing company:

- has the sole and exclusive right to hire, terminate, transfer, direct, control, and evaluate the employees, and pay the employees from its own payroll;
- is responsible for paying the employees regardless of whether it receives fees from the customer and for obtaining workers' compensation coverage under its own account to cover the employees; and
- receives fees from the customer based on a total-fee basis, not a direct cost pass-through basis.

An employee leasing company that is a sole employer is immune from liability as an "employer" under the industrial insurance law.

An "employee leasing company" is defined as a business that provides workers, under a written agreement, to another business for jobs that are not short-term, temporary, or for a defined period of time.

**RULES AUTHORITY:** The bill does not contain provisions addressing the rule making powers of an agency.

**FISCAL NOTE:** Not requested.

**EFFECTIVE DATE:** Ninety days after adjournment of session in which bill is passed.