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SENATE BILL 5978

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State of Washington

54th Legislature

1995 Regular Session

By Senators Prentice, Gaspard, A. Anderson, Newhouse, Winsley and Rasmussen

Read first time 02/20/95. Referred to Committee on Labor, Commerce & Trade.

1 AN ACT Relating to employment in the construction industry;  
2 amending RCW 51.24.035, 51.16.140, and 51.32.073; adding a new section  
3 to chapter 49.17 RCW; creating a new section; providing an effective  
4 date; and declaring an emergency.

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

6 **Sec. 1.** RCW 51.24.035 and 1987 c 212 s 1801 are each amended to  
7 read as follows:

8 (1) Notwithstanding RCW 51.24.030(1), the injured worker or  
9 beneficiary may not seek damages ((against a design professional who is  
10 a third person and who has been retained to perform professional  
11 services on a construction project, or any employee of a design  
12 professional who is assisting or representing the design professional  
13 in the performance of professional services on the site of the  
14 construction project, unless responsibility for safety practices is  
15 specifically assumed by contract, the provisions of which were mutually  
16 negotiated, or the design professional actually exercised control over  
17 the portion of the premises where the worker was injured)) for an  
18 injury or occupational disease occurring in the course of employment at  
19 the site of a construction project, whether accomplished by a single

1 contract or by multiple contracts, against the owner or developer of  
2 the project or against any person or entity performing work, furnishing  
3 materials, or providing services to or for the construction project  
4 including, but not limited to, design professionals, construction  
5 managers, general or prime contractors, suppliers, subcontractors of  
6 any tier, and any employee of a design professional, construction  
7 manager, general or prime contractor, supplier, or subcontractor of any  
8 tier.

9 (2) The immunity provided by this section does not extend to any  
10 person or entity who injures a worker by deliberate intention as  
11 defined in RCW 51.24.020, and it is against public policy to seek  
12 indemnification in construction contracts against such liability. Such  
13 contractual clauses are void and unenforceable.

14 (3) The immunity provided by this section does not extend to  
15 manufacturers and product sellers for product liability actions as  
16 defined in chapter 7.72 RCW.

17 (4) The immunity provided by this section does not apply to the  
18 negligent preparation of design plans and specifications by a design  
19 professional.

20 (~~(3)~~) (5) For the purposes of this section, "design professional"  
21 means an architect, professional engineer, land surveyor, or landscape  
22 architect, who is licensed or authorized by law to practice such  
23 profession, or any corporation organized under chapter 18.100 RCW or  
24 authorized under RCW 18.08.420 or 18.43.130 to render design services  
25 through the practice of one or more of such professions.

26 **Sec. 2.** RCW 51.16.140 and 1989 c 385 s 3 are each amended to read  
27 as follows:

28 (1) Every employer who is not a self-insurer shall deduct from the  
29 pay of each of his or her workers one-half of the amount he or she is  
30 required to pay(~~(7)~~) for medical benefits within each risk  
31 classification, except that for workers in the construction industry,  
32 the amount deducted shall not be more than one-third of the amount that  
33 the employer would be required to pay, but in no case more than one-  
34 third of the basic manual premium rate established by the department  
35 for the applicable risk classification. Such amount shall be  
36 periodically determined by the director and reported by him or her to  
37 all employers under this title: PROVIDED, That the state governmental  
38 unit shall pay the entire amount into the medical aid fund for

1 volunteers, as defined in RCW 51.12.035, and the state apprenticeship  
2 council shall pay the entire amount into the medical aid fund for  
3 registered apprentices or trainees, for the purposes of RCW 51.12.130.  
4 The deduction under this section is not authorized for premiums  
5 assessed under RCW 51.16.210.

6 (2) It shall be unlawful for the employer, unless specifically  
7 authorized by this title, to deduct or obtain any part of the premium  
8 or other costs required to be by him or her paid from the wages or  
9 earnings of any of his or her workers, and the making of or attempt to  
10 make any such deduction shall be a gross misdemeanor.

11 **Sec. 3.** RCW 51.32.073 and 1989 c 385 s 4 are each amended to read  
12 as follows:

13 (1) Except as provided in subsection (2) of this section, each  
14 employer shall retain from the earnings of each worker, except for  
15 workers in the construction industry, that amount as shall be fixed  
16 from time to time by the director, the basis for measuring said amount  
17 to be determined by the director. The money so retained shall be  
18 matched in an equal amount by each employer, and all such moneys shall  
19 be remitted to the department in such manner and at such intervals as  
20 the department directs and shall be placed in the supplemental pension  
21 fund: PROVIDED, That the state apprenticeship council shall pay the  
22 entire amount into the supplemental pension fund for registered  
23 apprentices or trainees during their participation in supplemental and  
24 related instruction classes. The moneys so collected shall be used  
25 exclusively for the additional payments from the supplemental pension  
26 fund prescribed in this title and for the amount of any increase  
27 payable under the provisions of RCW 51.32.075, as now or hereafter  
28 amended, and shall be no more than necessary to make such payments on  
29 a current basis. Employers in the construction industry shall pay the  
30 entire amount into the supplemental pension fund for employees engaged  
31 in construction work, as reported in construction industry industrial  
32 insurance classifications adopted by the department. The department  
33 may require a self-insurer to make any additional payments which are  
34 payable from the supplemental pension fund and thereafter such self-  
35 insurer shall be reimbursed therefrom.

36 (2) None of the amount assessed for the supplemental pension fund  
37 under RCW 51.16.210 may be retained from the earnings of workers  
38 covered under RCW 51.16.210.

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

3        Each prime contractor or general contractor has a duty to provide  
4 a safe place to work for its own employees and the employees of a  
5 subcontractor of any tier working at the site of a construction  
6 project. This duty shall be considered within the context of standard  
7 construction industry practices and shall establish that the general  
8 contractor or prime contractor has the primary responsibility for  
9 compliance with safety regulations. Such duty includes implementation  
10 of a safety program specific to the site of a construction project that  
11 is effective in practice and that includes contractual requirements for  
12 compliance for all lower-tier construction employers engaged in work at  
13 the site of a construction project.

14        Each prime contractor or general contractor shall take reasonable  
15 steps to ensure that its safety program is designed to comply with  
16 Title 51 RCW and chapter 49.17 RCW, including the development,  
17 implementation, and periodic evaluation of a written accident  
18 prevention program for each construction project. This plan shall be  
19 communicated to the prime contractor's or general contractor's  
20 employees and to all subcontractors of any tier on the site of the  
21 construction project. All construction employers, whether prime  
22 contractor, general contractor, or subcontractor of any tier, shall  
23 designate an individual with responsibility for construction jobsite  
24 safety. The prime contractor or general contractor shall post the name  
25 and telephone number of its designated individual at the site of a  
26 construction project. All subcontractors shall inform the prime  
27 contractor or general contractor and each of that subcontractor's own  
28 employees of the name and telephone number of the subcontractor's  
29 designated individual.

30        Suggestions for safety improvements and identification of potential  
31 hazards at the site of a construction project are to be encouraged.  
32 Permissible disciplinary actions for violation of these or other  
33 appropriately communicated requirements include, but are not limited  
34 to: Verbal or written reprimand, suspension from work, and termination  
35 for cause. Such disciplinary actions for violations shall be subject  
36 to the disciplinary provisions set forth in an employer's written  
37 policy statement or in a written agreement between an employer and  
38 employees, if such a written agreement exists.

1       Neither violation of the provisions of this section nor the  
2 issuance of a citation under chapter 49.17 RCW shall eliminate or  
3 effect any change to the immunity conferred in RCW 51.24.035.

4       NEW SECTION.   **Sec. 5.** The department of labor and industries shall  
5 adopt rules in consultation with the affected parties, that are  
6 consistent with the legislative intent of this act to implement this  
7 act.

8       NEW SECTION.   **Sec. 6.** (1) Sections 1, 4, and 5 of this act are  
9 necessary for the immediate preservation of the public peace, health,  
10 or safety, or support of the state government and its existing public  
11 institutions, and shall take effect immediately.

12       (2) Sections 2 and 3 of this act shall take effect July 1, 1996.

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