

# HOUSE BILL REPORT

## SHB 2312

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### As Passed Legislature

**Title:** An act relating to workers' compensation obligations of employers not domiciled in Washington.

**Brief Description:** Prescribing workers' compensation obligations of employers not domiciled in Washington.

**Sponsors:** By House Committee on Commerce/Lab (originally sponsored by Representatives Doumit, Pennington, Hatfield, Kenney, Clements, Carlson, Kessler, Anderson, Dunn and Tokuda).

**Brief History:**

**Committee Activity:**

Commerce & Labor: 1/28/98, 2/5/98 [DPS].

**Floor Activity:**

Passed House: 2/12/98, 94-0.

Passed Legislature.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives McMorris, Chairman; Honeyford, Vice Chairman; Conway, Ranking Minority Member; Wood, Assistant Ranking Minority Member; Boldt; Clements; Cole; Hatfield and Lisk.

**Staff:** Chris Cordes (786-7103).

**Background:**

Industrial Insurance Coverage Requirements under Reciprocity Agreements. The Washington industrial insurance law, with certain exemptions, covers all workers employed by persons or entities engaged in business in Washington. There may not be coverage, however, if the worker's employment in Washington is subject to a reciprocal agreement with another state. The industrial insurance law permits the director of the Department of Labor and Industries to enter into reciprocal agreements with other states and provinces of Canada governing jurisdiction over claims when the contract of employment arises in one jurisdiction and the injury occurs in another.

The department has entered into reciprocal agreements with Idaho, Montana, North Dakota, Nevada, Oregon, South Dakota, and Wyoming. Under the Oregon reciprocal agreement, the Washington state fund is responsible for coverage of a Washington employer's Washington workers who are injured in Oregon while the employer has a temporary workplace in Oregon, and Oregon is similarly responsible for Oregon employers' Oregon workers working in a temporary workplace in Washington.

Coverage Requirements for Out-of-State Employers. An out-of-state employer who has employees working in Washington is penalized under Washington's industrial insurance law if, after one of his or her workers is injured, the employer had failed to secure workers' compensation coverage. If that injured worker is entitled to compensation under Washington law because of an injury in Washington, the employer who does not have an account with the state fund in Washington, or is not qualified as a self-insurer, must file a certificate from the employer's state of domicile showing that the employer has coverage for the injured worker.

Filing a certificate appoints the director of the Department of Labor and Industries as the employer's agent for service of process in any proceeding brought by the injured worker under Washington's industrial insurance law. If the employer is insured, the insurance carrier is subject to Washington's industrial insurance law with respect to the claim, up to the amount of its liability under the other state law, unless its contract with the employer provides for coverage equivalent to Washington's coverage. The director may require the employer to file additional security if the insurance coverage is less than the total compensation to which the injured worker is entitled under Washington law. If the employer is self-insured under the other state's law, the employer may be deemed to be qualified as a self-insurer under Washington's law.

If the employer does not have coverage in the other state or has inadequate coverage, the injured worker receives benefits from the Washington state fund, and the employer is subject to a penalty of up to 50 percent of the department's cost beyond what is covered by the employer or its insurer. (Washington employers who violate industrial insurance requirements are subject to a penalty of \$500 or double the premiums that were incurred before obtaining coverage, and from 50 to 100 percent of the cost of the benefits paid to a worker before coverage is obtained.)

Public entities are required to contract with registered contractors or licensed electrical contractors on public works projects, unless, on transportation construction projects, the contractor is prequalified. A contractor registering or applying for a license must show an industrial insurance account number covering employees domiciled in Washington and evidence of workers' compensation coverage in the employer's state of domicile for employees working in Washington who are not domiciled in Washington. The employer's unified business identifier account number may be used in lieu of the industrial insurance account number.

Coverage Requirements for Washington Employers Operating in Oregon. Generally, a worker from Washington and the worker's Washington employer are exempt from Oregon's workers' compensation coverage requirements if:

- the worker is temporarily working in Oregon;
- the employer has workers' compensation coverage for the worker under Washington's law; and
- Washington recognizes Oregon's extraterritorial provisions and has reciprocal exemptions for Oregon employers.

However, Oregon's public works law requires all public works contracts to contain a clause making employers working under the contract subject to Oregon's workers' compensation law.

**Summary of Bill:**

Intent. The Legislature makes a finding that a competitive disadvantage exists in the construction industry because of a disparity in worker's compensation coverage among the states. An intent section states that these new provisions are intended to provide an equal footing for all contractors, to ensure that injured workers receive the benefits to which they are entitled, and to not create disincentives for hiring Washington workers.

Industrial Insurance Coverage Requirements for Out-of-State Contractors. Out-of-state contractors who are employing workers in Washington in work that requires the contractor to be registered or licensed, or prequalified on transportation projects, must secure the payment of compensation under Washington law by:

- insuring with the Department of Labor and Industries;
- being self-insured in Washington; or
- as permitted by a reciprocity agreement with the employer's state or province of domicile, filing a certificate of coverage from the other state. (The Department of Labor and Industries' authority to subject an out-of-state employer or employer's insurance carrier to liability for an injury occurring in Washington applies if the employer files the certificate.)

If an out-of-state contractor does not comply with this coverage requirement, the injured worker is covered by the state fund and the employer is subject to the same requirements and penalties as Washington employers who fail to comply with industrial insurance requirements.

The contractor registration law and electrical licensing law are made consistent with these new provisions for contractors applying for registration or licensing. A contractor applicant is not permitted to use his or her unified business identifier account number as a substitute for an industrial insurance number unless the applicant will not employ employees in Washington.

Reciprocity Agreements. The director's authority to enter into industrial insurance reciprocal agreements with other states is modified. If the other state's law requires Washington employers to have workers' compensation coverage under the other state's law for work which in Washington would require the employer to be a registered contractor or licensed electrical contractor, or be prequalified for transportation projects, then the employers domiciled in that other state must purchase coverage under Washington's law when their workers are engaged in that work in Washington.

Study. The Workers' Compensation Advisory Committee must appoint a subcommittee to review these new provisions and report to the Department of Labor and Industries. The department must submit a final report to the Legislature by January 15, 1999.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The Legislature needs to address a problem that is particularly acute for the construction industry. Under the current laws, Oregon contractors have an advantage when they come to Washington on construction jobs. These out-of-state contractors only need to have Oregon coverage, while Washington contractors working in Oregon must have coverage under both state laws. In addition, Washington contractors are rated in the high risk pool when they obtain Oregon coverage. The department needs better leverage to obtain a level playing field when negotiating reciprocity agreements with other states.

**Testimony Against:** This is a complex issue that needs to be addressed carefully. For example, the scope of the bill is very broad and may cover more than is intended. It is a concern when states begin raising fences against each other's employers and creating a retaliatory environment. If the problem is to be addressed completely, the bill should provide for full reciprocity between Oregon and Washington. Part of the problem is that Washington is an exclusive state fund state surrounded by states with private insurance.

**Testified:** (In support) Representative Mark Doumit, prime sponsor; David Roewe; Douglas Connell, Department of Labor and Industries; Jim King, Washington Drywall Coalition; Bob Dilger, Washington State Building and Construction Trades Council; and Robby Stern, Washington State Labor Council. (In support, with concerns) Rick Slunaker, Associated General Contractors. (Opposed) Dale Newell, Independent Agents and Brokers of the West. (No position) Clif Finch, Association of Washington Business; and Wayne Lieb, Washington State Trial Lawyers Association.