

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2720

Chapter 209, Laws of 1992  
(partial veto)

52nd Legislature  
1992 Regular Session

WORKERS' COMPENSATION COVERAGE FOR LONGSHORE AND HARBOR WORKERS

EFFECTIVE DATE: 4/2/92

Passed by the House March 12, 1992  
Yeas 95 Nays 2

JOE KING  
**Speaker of the  
House of Representatives**

Passed by the Senate March 12, 1992  
Yeas 42 Nays 3

JOEL PRITCHARD  
**President of the Senate**

Approved April 2, 1992, with the  
exception of section 5, which is  
vetoed.

BOOTH GARDNER  
**Governor of the State of Washington**

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is SUBSTITUTE HOUSE BILL 2720 as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON  
**Chief Clerk**

FILED  
April 2, 1992 - 11:57 a.m.

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 2720**

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AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 1992 Regular Session

**State of Washington                      52nd Legislature                      1992 Regular Session**

**By** House Committee on Financial Institutions & Insurance (originally sponsored by Representatives R. Meyers, Paris, Anderson, Hargrove, Miller, H. Sommers, Winsley, Jones, Basich, J. Kohl, Belcher and Orr)

Read first time 02/07/92.

1            AN ACT Relating to longshore and harbor workers' compensation act  
2 insurance; adding new sections to chapter 48.22 RCW; adding a new  
3 section to chapter 48.15 RCW; creating a new section; providing an  
4 expiration date; and declaring an emergency.

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

6            NEW SECTION.    **Sec. 1.**            The legislature finds and declares that  
7 the continued existence of a strong and healthy maritime industry in  
8 this state is threatened by the unavailability and excessive cost of  
9 workers' compensation coverage required by the United States  
10 longshoreman's and harbor worker's compensation act. The legislature,  
11 therefore, acting under its authority to protect industry and  
12 employment in this state hereby establishes a commission to devise and  
13 implement both a near and long-term solution to this problem, for the

1 purpose of maintaining employment for Washington workers and a vigorous  
2 maritime industry.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 48.22 RCW  
4 to read as follows:

5 (1) Before July 1, 1992, the commissioner shall adopt rules  
6 establishing a reasonable plan to insure that workers' compensation  
7 coverage as required by the United States longshoreman's and harbor  
8 worker's compensation act, 33 U.S.C. Secs. 901 through 950, and  
9 maritime employer's liability coverage incidental to the workers'  
10 compensation coverage is available to those unable to purchase it  
11 through the normal insurance market. This plan shall require the  
12 participation of all authorized insurers writing primary and excess  
13 workers' compensation insurance or reinsurance and the Washington state  
14 industrial insurance fund as defined in RCW 51.08.175 which is  
15 authorized to participate in the plan and to make payments in support  
16 of the plan in accordance with this section. Any underwriting losses  
17 incurred by the plan shall be shared by plan participants in accordance  
18 with the following ratios: The state industrial insurance fund, fifty  
19 percent; authorized insurers writing United States longshoreman's and  
20 harbor workers' compensation insurance, forty-eight percent; and  
21 authorized insurers writing excess workers' compensation insurance or  
22 reinsurance, two percent.

23 (2) The Washington state industrial insurance fund shall obtain or  
24 provide coverage for the plan created under subsection (1) of this  
25 section on an excess of loss basis that would cover plan losses  
26 exceeding the net earned and retained premiums written including  
27 investment income of the plan as negotiated between the state fund and  
28 the plan. If such coverage is not provided by July 1, 1992, or if the  
29 commissioner determines that the premium to be charged for such

1 coverage would result in unaffordable rates for coverage provided by  
2 the plan, the industrial insurance fund shall be relieved of  
3 responsibility for obtaining or providing excess of loss coverage. In  
4 considering whether excess of loss coverage premiums would result in  
5 unaffordable rates for workers' compensation coverage provided by the  
6 plan, the commissioner shall compare the resulting plan rates to those  
7 provided under any similar pool or plan of other states in existence  
8 prior to July 1, 1992.

9 (3) An applicant for plan insurance, a person insured under the  
10 plan, or an insurer, affected by a ruling or decision of the manager or  
11 committee designated to operate the plan may appeal to the commissioner  
12 for resolution of a dispute. In adopting rules under this section, the  
13 commissioner shall require that the plan use generally accepted  
14 actuarial principles for rate making.

15 NEW SECTION. **Sec. 3.** A new section is added to chapter 48.22 RCW  
16 to read as follows:

17 Before April 15, 1992, the commissioner shall appoint a committee  
18 to provide assistance in drafting the rules required by section 2 of  
19 this act. After July 1, 1992, the committee shall assist the  
20 commissioner in overseeing the operation of the plan. The committee  
21 shall consist of at least eight members. The commissioner and the  
22 director of the department of labor and industries shall be members.  
23 The remaining members shall be selected to insure equal representation  
24 of authorized insurers writing primary or excess workers' compensation  
25 insurance, insurance producers, organized labor, and maritime  
26 employers.

27 NEW SECTION. **Sec. 4.** A new section is added to chapter 48.22 RCW  
28 to read as follows:

1       The committee appointed pursuant to section 3 of this act shall  
2 submit a report to the legislature no later than January 1, 1993, that  
3 examines all aspects of the United States longshoreman's and harbor  
4 worker's act, 22 U.S.C. Secs. 901 through 950, coverage, and incidental  
5 maritime liability coverage, as it applies to Washington workers and  
6 employers. This study shall include but not be limited to the ability  
7 of private insurers to provide affordable coverage to eligible  
8 employers; whether the Washington state industrial insurance fund  
9 should participate in the plan adopted pursuant to section 2 of this  
10 act; whether there are methods that will satisfy the intent of chapter  
11 ..., Laws of 1992 (this act) that will not involve the Washington state  
12 industrial insurance fund; and the feasibility of requiring that this  
13 coverage be made directly available through the Washington state  
14 industrial insurance fund.

15       **\*NEW SECTION.** *Sec. 5. A new section is added to chapter 48.15 RCW*  
16 *to read as follows:*

17       *An unauthorized insurer shall not solicit or provide federally*  
18 *required longshore and harbor workers' insurance on subjects located,*  
19 *resident, or to be performed within the state.*

20       *\*Sec. 5 was vetoed, see message at end of chapter.*

21       **NEW SECTION.** **Sec. 6.**       This act shall expire on July 1, 1993.

22       **NEW SECTION.** **Sec. 7.**       This act is necessary for the immediate  
23 preservation of the public peace, health, or safety, or support of the  
24 state government and its existing public institutions, and shall take  
25 effect immediately.  
26

Passed the House March 12, 1992.  
Passed the Senate March 12, 1992.  
Approved by the Governor April 2, 1992, with the exception of  
certain items which were vetoed.  
Filed in Office of Secretary of State April 2, 1992.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 5,  
3 Substitute House Bill No. 2720 entitled:

4 "AN ACT Relating to longshore and harbor workers' compensation act  
5 insurance."

6 The purpose of Substitute House Bill No. 2720 is to create a  
7 temporary insurance plan so that workers' compensation coverage, as  
8 required by the United States Longshoremen's and Harbor Worker's  
9 Compensation Act, is available in our state.

10 Section 5 would close the Washington market to all but certain  
11 insurers. If this section were to become law, it would further limit  
12 the availability of insurance, and it could limit the availability of  
13 reinsurance. Section 5 could also lead to reciprocal actions by other  
14 states against Washington insurers and could violate federal statutes  
15 preempting state authority in this area. Section 5 would be subject to  
16 likely court challenge and could place the temporary plan in jeopardy.

17 While I am supportive of the need to retain the viability of our  
18 longshore and harbor workers' insurance, I believe this legislation is  
19 a poor solution to the potential loss of United States Longshoreman's  
20 and Harbor Worker's Compensation Act coverage. The involvement of the  
21 state workers' compensation fund is inappropriately designed.

22 However, I must sign the remainder of the bill into law since this  
23 is the only solution now certain to provide the necessary workers'  
24 compensation coverage to our maritime industry. During the next year,  
25 a better solution needs to be found before the temporary plan expires.

26 For these reasons, I have vetoed section 5 of Substitute House Bill  
27 No. 2720.

28 With the exception of section 5, Substitute House Bill No. 2720 is  
29 approved."