

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5217

68th Legislature
2023 Regular Session

Passed by the Senate March 1, 2023
Yeas 27 Nays 21

President of the Senate

Passed by the House April 7, 2023
Yeas 51 Nays 46

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5217** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5217

Passed Legislature - 2023 Regular Session

State of Washington 68th Legislature 2023 Regular Session

By Senate Labor & Commerce (originally sponsored by Senators Dhingra, Kauffman, Keiser, Kuderer, Lovelett, Nguyen, Nobles, Pedersen, Valdez, and C. Wilson)

READ FIRST TIME 02/08/23.

1 AN ACT Relating to the state's ability to regulate certain
2 industries and risk classifications to prevent musculoskeletal
3 injuries and disorders; amending RCW 49.17.020; adding new sections
4 to chapter 49.17 RCW; creating a new section; and repealing RCW
5 49.17.360 and 49.17.370.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that the absence
8 of the department of labor and industries' authority to regulate
9 working practices to prevent musculoskeletal injuries and disorders
10 has contributed to excess and avoidable claims and costs across the
11 workers' compensation system for all employers in Washington,
12 including those employers who maintain safer workplaces without high
13 incidents of musculoskeletal injuries and disorders.

14 (2) The legislature finds that work-related musculoskeletal
15 injuries and disorders account for at least one-third of all workers'
16 compensation claims that result in time loss and wage replacement;
17 are more severe than the average nonfatal injury or illness; and are
18 a common cause of long-term disability in Washington state.

19 (3) The legislature finds that many of Washington state's
20 critical industries, including health care, are described by the
21 federal bureau of labor statistics as high-risk industries for

1 musculoskeletal injuries. These are also industries that are
2 currently experiencing significant staffing shortages. Further, these
3 injuries lead to high employer costs including absenteeism, decreased
4 productivity, and increased costs for health care, disability, and
5 workers' compensation, among other costs.

6 (4) The legislature therefore intends to repeal the prohibition
7 on regulating working practices related to musculoskeletal injuries
8 and disorders, thereby allowing targeted safety efforts to more
9 effectively and efficiently prevent these workplace injuries. By
10 removing this barrier, the legislature will restore the state's
11 ability to more strategically address important workplace safety
12 issues and reduce costs for all employers and workers.

13 NEW SECTION. **Sec. 2.** The following acts or parts of acts are
14 each repealed:

- 15 (1) RCW 49.17.360 (Ergonomics Initiative—Intent) and 2004 c 1 s
16 1; and
- 17 (2) RCW 49.17.370 (Ergonomics Initiative—Definition—Rule repeal)
18 and 2004 c 1 s 2.

19 **Sec. 3.** RCW 49.17.020 and 2010 c 8 s 12005 are each amended to
20 read as follows:

21 ~~((For the purposes of this chapter:))~~ The definitions in this
22 section apply throughout this chapter unless the context clearly
23 requires otherwise.

- 24 (1) ~~((The term "agriculture"))~~ (a) "Agriculture" means farming
25 and includes, but is not limited to:
 - 26 ~~((a))~~ (i) The cultivation and tillage of the soil;
 - 27 ~~((b))~~ (ii) Dairying;
 - 28 ~~((c))~~ (iii) The production, cultivation, growing, and
29 harvesting of any agricultural or horticultural commodity;
 - 30 ~~((d))~~ (iv) The raising of livestock, bees, fur-bearing animals,
31 or poultry; and
 - 32 ~~((e))~~ (v) Any practices performed by a farmer or on a farm,
33 incident to or in connection with such farming operations, including
34 but not limited to preparation for market and delivery to:
 - 35 ~~((i))~~ (A) Storage;
 - 36 ~~((ii))~~ (B) Market; or
 - 37 ~~((iii))~~ (C) Carriers for transportation to market.

1 (~~The term "agriculture"~~) (b) "Agriculture" does not mean a
2 farmer's processing for sale or handling for sale a commodity or
3 product grown or produced by a person other than the farmer or the
4 farmer's employees.

5 (2) (~~The term "director"~~) "Director" means the director of the
6 department of labor and industries, or his or her designated
7 representative.

8 (3) (~~The term "department"~~) "Department" means the department
9 of labor and industries.

10 (4) (~~The term "employer"~~) "Employer" means any person, firm,
11 corporation, partnership, business trust, legal representative, or
12 other business entity which engages in any business, industry,
13 profession, or activity in this state and employs one or more
14 employees or who contracts with one or more persons, the essence of
15 which is the personal labor of such person or persons and includes
16 the state, counties, cities, and all municipal corporations, public
17 corporations, political subdivisions of the state, and charitable
18 organizations: PROVIDED, That any person, partnership, or business
19 entity not having employees, and who is covered by the industrial
20 insurance act (~~shall~~) must be considered both an employer and an
21 employee.

22 (5) (~~The term "employee"~~) "Employee" means an employee of an
23 employer who is employed in the business of his or her employer
24 whether by way of manual labor or otherwise and every person in this
25 state who is engaged in the employment of or who is working under an
26 independent contract the essence of which is his or her personal
27 labor for an employer under this chapter whether by way of manual
28 labor or otherwise.

29 (6) (~~The term "person"~~) "Person" means one or more individuals,
30 partnerships, associations, corporations, business trusts, legal
31 representatives, or any organized group of persons.

32 (7) (~~The term "safety and health standard"~~) "Risk
33 classification" means any classification defined in chapter 296-17A
34 WAC classifications for Washington workers' compensation insurance.

35 (8) "Safety and health standard" means a standard which requires
36 the adoption or use of one or more practices, means, methods,
37 operations, or processes reasonably necessary or appropriate to
38 provide safe or healthful employment and places of employment.

39 (~~(8) The term "workplace"~~) (9) "Workplace" means any plant,
40 yard, premises, room, or other place where an employee or employees

1 are employed for the performance of labor or service over which the
2 employer has the right of access or control, and includes, but is not
3 limited to, all workplaces covered by industrial insurance under
4 Title 51 RCW, as now or hereafter amended.

5 ~~((9) The term "working day"))~~ (10) "Working day" means a
6 calendar day, except Saturdays, Sundays, and all legal holidays as
7 set forth in RCW 1.16.050, as now or hereafter amended, and for the
8 purposes of the computation of time within which an act is to be done
9 under the provisions of this chapter, ~~((shall))~~ must be computed by
10 excluding the first working day and including the last working day.

11 (11) "Work-related musculoskeletal injuries and disorders" means
12 injuries or disorders of the muscles, nerves, tendons, joints,
13 cartilage, and spinal discs associated with exposure to risk factors
14 in the workplace. Musculoskeletal injuries and disorders include
15 sprains, strains, tears, back pain, soreness, pain, carpal tunnel
16 syndrome, musculoskeletal system or connective tissue diseases and
17 disorders when the event or exposure leading to the injury or illness
18 is bodily reaction from bending, climbing, crawling, reaching,
19 twisting, sitting, or standing; being rubbed or abraded by kneeling
20 on a surface; being rubbed, abraded, or jarred by vibration;
21 overexertion; or repetition. The department may update this
22 definition in accordance with changes to the United States department
23 of labor's definition or updates to the United States bureau of labor
24 statistics' occupational injury and illness classification system.

25 NEW SECTION. Sec. 4. A new section is added to chapter 49.17
26 RCW to read as follows:

27 (1) The department may adopt rules related to preventing
28 musculoskeletal injuries and disorders that provide standards for an
29 industry or risk classification, subject to the limits in this
30 section.

31 (2)(a) Within a 12-month period, the department may not adopt
32 more than one set of rules related to preventing musculoskeletal
33 injuries and disorders for an industry or risk classification that
34 previously did not have rules related to preventing musculoskeletal
35 injuries and disorders. The rules would apply to an establishment
36 engaged in activities as defined by the industry or risk
37 classification.

38 (b) Subject to subsection (10) of this section, the department
39 may not adopt emergency rules under chapter 34.05 RCW related to

1 preventing musculoskeletal injuries and disorders for an industry or
2 risk classification that previously did not have rules related to
3 preventing musculoskeletal injuries and disorders.

4 (3) (a) Rules providing standards may only be adopted for
5 industries or risk classifications where compensable workers'
6 compensation claims involved musculoskeletal injuries and disorders
7 at a rate greater than two times the overall state workers'
8 compensation compensable claim rate for musculoskeletal injuries and
9 disorders over a recent five-year period.

10 (b) When adopting rules by industry subsector at the three-digit
11 level, the department must exclude from regulation North American
12 industry classification system industry group at the four-digit level
13 and industry classification at the five-digit level within the
14 industry subsector that have a musculoskeletal injuries and disorders
15 rate less than two times the overall state workers' compensation
16 compensable claim rate for musculoskeletal injuries and disorders
17 over a recent five-year period.

18 (c) When adopting rules by industry group at the four-digit
19 level, the department must exclude from regulation North American
20 industry classification system industry classifications at the five-
21 digit level within the industry group that have a musculoskeletal
22 injuries and disorders rate less than two times the overall state
23 workers' compensation compensable claim rate for musculoskeletal
24 injuries and disorders over a recent five-year period.

25 (d) When adopting rules by risk classification at the four-digit
26 level, the department must exclude six-digit risk classifications
27 within the four-digit risk classification if they have a
28 musculoskeletal injuries and disorders rate less than two times the
29 overall state workers' compensation compensable claim rate for
30 musculoskeletal injuries and disorders over a recent five-year
31 period.

32 (e) When selecting an industry or risk classification from the
33 list established for potential rule making in section 4(8)(a) of this
34 act, the department shall consider if the industry is demonstrating a
35 statistical downward trend in the claims rates that is greater than
36 the statewide average.

37 (4) Within 90 days of the department filing a preproposal
38 statement of inquiry (CR-101) for industry or risk classifications
39 specific rules related to preventing musculoskeletal injuries and
40 disorders, the department must provide a report to the appropriate

1 committees of the legislature. The report must include the criteria
2 the department used to select the industry or rate risk
3 classification that will be subject to the rules and a description of
4 the rule-making procedures under chapter 34.05 RCW which the
5 department will follow for the specific rules.

6 (5) During rule making, the department must consider including
7 options for an employer to demonstrate alternative control methods
8 where:

9 (a) The alternative methods are at least as effective as the rule
10 requirements;

11 (b) Affected employees are trained and monitored for compliance;
12 and

13 (c) The employer has documented all efforts.

14 (6) When filing a preproposal statement of inquiry (CR-101) for
15 industry or risk classification specific rules related to preventing
16 musculoskeletal injuries and disorders, the department must include
17 the convening of an advisory committee comprised of equal
18 representatives of employers and workers from the industry or risk
19 classification that will be subject to the rules.

20 (7) During rule making under this section, the department must
21 solicit input on the effective date to specify in the order of
22 adoption under RCW 34.05.380. The effective date may not be less than
23 120 days after adoption and no rule may be effective prior to July 1,
24 2026.

25 (8) Annually by November, the department must:

26 (a) Publish a list of industries and risk classifications
27 eligible for rule making under this section. The list must identify
28 low priority industries and risk classifications for whom the
29 statistical trend suggests the industry or risk classification will
30 have a rate lower than two times the state average in the next three
31 years. The list must include compensable claims over the five
32 calendar year period that ended two calendar years before the report
33 is published; and

34 (b) Conduct a review of the compensable workers' compensation
35 claims data identified in (a) of this subsection to ensure that the
36 data only reflects injuries or disorders consistent with work-related
37 musculoskeletal injuries or disorders as defined by this act, and
38 publish the results of that review.

39 (c) Each year the department shall identify a list of industries
40 or risk classes most likely to be selected for future rule making and

1 prioritize efforts to provide technical assistance to those
2 employers.

3 (9) For employee home offices, the director does not have the
4 authority to adopt any new or amended rules dealing with
5 musculoskeletal injuries and disorders, or that deal with the same or
6 similar activities as the rules which were repealed in former RCW
7 49.17.370 for employee home offices, until and to the extent
8 comparable rules applying to employee home offices are required by
9 congress or the federal occupational safety and health
10 administration.

11 (10) Limits on rule making in this section do not apply to rules
12 adopted or amended where required by the federal occupational safety
13 and health administration.

14 (11) For the purposes of this section, "industry" means any
15 classification in the North American industry classification system
16 that defines an industry subsector at the three-digit level, industry
17 group at the four-digit level, and industry at the five-digit level.

18 (12) The department must provide up to three additional
19 ergonomists to provide consultation to employers in the industries
20 and risk classifications in the list published under subsection
21 (8)(a) of this section. Funding for the additional ergonomists must
22 be paid from the accident and medical aid funds.

23 NEW SECTION. **Sec. 5.** A new section is added to chapter 49.17
24 RCW to read as follows:

25 (1) The director is authorized, in the director's discretion, to
26 provide funding to employers to purchase additional equipment that
27 may be needed to comply with a rule adopted under section 4 of this
28 act. The maximum amount of funding each year is two percent of the
29 premiums paid into the accident fund in the prior year from employers
30 subject to a rule adopted under section 4 of this act.

31 (2) Only employers who pay premiums to the state fund as defined
32 in RCW 51.08.175 and are subject to a rule adopted under section 4 of
33 this act are eligible for funding under this section.

34 (3) An appropriation is not required for these expenditures.

35 (4) The department may adopt rules to implement this section.

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