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SECOND SUBSTITUTE HOUSE BILL 1989

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State of Washington

54th Legislature

1996 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Lisk, Ebersole and Patterson)

Read first time 02/01/96.

1 AN ACT Relating to employment in the construction industry;  
2 amending RCW 51.24.035; adding new sections to chapter 49.17 RCW;  
3 creating a new section; and declaring an emergency.

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

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

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

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

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

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

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

19 ~~((+3+))~~ (5) For the purposes of this section, "design professional"  
20 means an architect, professional engineer, land surveyor, or landscape  
21 architect, who is licensed or authorized by law to practice such  
22 profession, or any corporation organized under chapter 18.100 RCW or  
23 authorized under RCW 18.08.420 or 18.43.130 to render design services  
24 through the practice of one or more of such professions.

25 NEW SECTION. Sec. 2. A new section is added to chapter 49.17 RCW  
26 to read as follows:

27 All construction employers have a duty to provide a safe place to  
28 work for their own employees and the employees of their subcontractors  
29 of any tier working at the site of a construction project. This duty  
30 shall be considered within the context of standard construction  
31 industry practices. Such duty includes implementation of a safety  
32 program that is effective in practice.

33 All construction employers shall take reasonable steps to ensure  
34 that their safety programs are designed to comply with Title 51 RCW and  
35 this chapter, including the development, implementation, and periodic  
36 evaluation of a written accident prevention plan specific to the site  
37 of each construction project. All construction employers shall  
38 designate an individual with responsibility for construction jobsite

1 safety. All construction employers shall inform their own employees of  
2 the name and telephone number of that designated individual. The prime  
3 contractor or general contractor shall post the name and telephone  
4 number of its designated individual at the site of a construction  
5 project. All subcontractors shall inform the prime contractor or  
6 general contractor of the name and telephone number of the  
7 subcontractor's designated individual responsible for construction  
8 jobsite safety.

9        Suggestions for safety improvements and identification of potential  
10 hazards at the site of a construction project are to be encouraged.  
11 Permissible disciplinary actions for violation of these or other  
12 appropriately communicated requirements include, but are not limited  
13 to: Verbal or written reprimand, suspension from work, and termination  
14 for cause. Such disciplinary actions for violations shall be subject  
15 to the disciplinary provisions set forth in an employer's written  
16 policy statement or in a written agreement between an employer and  
17 employees, if such a written agreement exists.

18        Neither violation of the provisions of this section nor the  
19 issuance of a citation under this chapter eliminates or effects any  
20 change to the immunity conferred in RCW 51.24.035.

21        NEW SECTION. **Sec. 3.** A new section is added to chapter 49.17 RCW  
22 to read as follows:

23        The prime contractor or general contractor has the primary  
24 responsibility for compliance with safety regulations at each  
25 construction jobsite. If a construction employer's safety program is  
26 effective in practice, no citation shall be issued to the construction  
27 employer for violations of this chapter by any of the construction  
28 employer's subcontractors of any tier. A safety program shall be  
29 considered effective in practice if it complies with the following:

30        (1) A prime contractor or general contractor's subcontractors are  
31 required, by contract, to comply with the provisions of this chapter;  
32 and

33        (2) The prime contractor or general contractor develops,  
34 implements, and enforces a written accident prevention program for each  
35 construction project; and

36        (3) The prime contractor or general contractor requires each  
37 subcontractor at the site of a construction project to provide an  
38 accident prevention plan for that construction project, which shall be

1 available at the construction jobsite or at the prime contractor or  
2 general contractor's main business office located within the state of  
3 Washington; and

4 (4) The prime contractor or general contractor posts at that  
5 construction project the name and telephone number of its designated  
6 individual with responsibility for construction jobsite safety at that  
7 construction jobsite; and

8 (5) The prime contractor or general contractor provides to its  
9 employees all safety equipment necessary for that construction jobsite;  
10 and

11 (6) The prime contractor or general contractor provides, or  
12 requires by contract its subcontractors to provide to the  
13 subcontractor's employees, all safety equipment necessary for that  
14 construction jobsite.

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

19 NEW SECTION. **Sec. 5.** This act is necessary for the immediate  
20 preservation of the public peace, health, or safety, or support of the  
21 state government and its existing public institutions, and shall take  
22 effect immediately.

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