
SENATE BILL 5399

State of Washington

54th Legislature

1995 Regular Session

By Senators Pelz and Franklin; by request of Department of Labor & Industries

Read first time 01/23/95. Referred to Committee on Labor, Commerce & Trade.

1 AN ACT Relating to refining industrial insurance actions; and
2 amending RCW 51.12.120, 51.24.030, 51.24.050, 51.24.060, 51.24.090, and
3 51.52.060.

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

5 **Sec. 1.** RCW 51.12.120 and 1977 ex.s. c 350 s 23 are each amended
6 to read as follows:

7 (1) If a worker, while working outside the territorial limits of
8 this state, suffers an injury on account of which he or she, or his or
9 her beneficiaries, would have been entitled to compensation under this
10 title had such injury occurred within this state, such worker, or his
11 or her beneficiaries, shall be entitled to compensation under this
12 title: PROVIDED, That if at the time of such injury:

13 (a) His or her employment is principally localized in this state;
14 or

15 (b) He or she is working under a contract of hire made in this
16 state for employment not principally localized in any state; or

17 (c) He or she is working under a contract of hire made in this
18 state for employment principally localized in another state whose
19 workers' compensation law is not applicable to his or her employer; or

1 (d) He or she is working under a contract of hire made in this
2 state for employment outside the United States and Canada.

3 (2) The payment or award of compensation or other recoveries,
4 including settlement proceeds, under the workers' compensation law of
5 another state, territory, province, or foreign nation to a worker or
6 his or her beneficiaries otherwise entitled on account of such injury
7 to compensation under this title shall not be a bar to a claim for
8 compensation under this title: PROVIDED, That claim under this title
9 is timely filed. If compensation is paid or awarded under this title,
10 the total amount of compensation or other recoveries, including
11 settlement proceeds, paid or awarded the worker or beneficiary under
12 such other workers' compensation law shall be credited against the
13 compensation due the worker or beneficiary under this title.

14 (3) If a worker or beneficiary is entitled to compensation under
15 this title by reason of an injury sustained in this state while in the
16 employ of an employer who is domiciled in another state and who has
17 neither opened an account with the department nor qualified as a self-
18 insurer under this title, such an employer or his or her insurance
19 carrier shall file with the director a certificate issued by the agency
20 which administers the workers' compensation law in the state of the
21 employer's domicile, certifying that such employer has secured the
22 payment of compensation under the workers' compensation law of such
23 other state and that with respect to said injury such worker or
24 beneficiary is entitled to the benefits provided under such law. In
25 such event:

26 (a) The filing of such certificate shall constitute appointment by
27 the employer or his or her insurance carrier of the director as its
28 agent for acceptance of the service of process in any proceeding
29 brought by any claimant to enforce rights under this title;

30 (b) The director shall send to such employer or his or her
31 insurance carrier, by registered or certified mail to the address shown
32 on such certificate, a true copy of any notice of claim or other
33 process served on the director by the claimant in any proceeding
34 brought to enforce rights under this title;

35 (c)(i) If such employer is a self-insurer under the workers'
36 compensation law of such other state, such employer shall, upon
37 submission of evidence or security, satisfactory to the director, of
38 his or her ability to meet his or her liability to such claimant under
39 this title, be deemed to be a qualified self-insurer under this title;

1 (ii) If such employer's liability under the workers' compensation
2 law of such other state is insured, such employer's carrier, as to such
3 claimant only, shall be deemed to be subject to this title: PROVIDED,
4 That unless its contract with said employer requires it to pay an
5 amount equivalent to the compensation benefits provided by this title,
6 the insurer's liability for compensation shall not exceed its liability
7 under the workers' compensation law of such other state;

8 (d) If the total amount for which such employer's insurer is liable
9 under (c)(ii) above is less than the total of the compensation to which
10 such claimant is entitled under this title, the director may require
11 the employer to file security satisfactory to the director to secure
12 the payment of compensation under this title; ((and))

13 (e) If such employer has neither qualified as a self-insurer nor
14 secured insurance coverage under the workers' compensation law of
15 another state, such claimant shall be paid compensation by the
16 department; and

17 (f) Any such employer shall have the same rights and obligations as
18 other employers subject to this title and where he or she has not
19 provided coverage or sufficient coverage to secure the compensation
20 provided by this title to such claimant, the director may impose a
21 penalty payable to the department of a sum not to exceed fifty percent
22 of the cost to the department of any deficiency between the
23 compensation provided by this title and that afforded such claimant by
24 such employer or his or her insurance carrier if any.

25 (4) As used in this section:

26 (a) A person's employment is principally localized in this or
27 another state when (i) his or her employer has a place of business in
28 this or such other state and he or she regularly works at or from such
29 place of business, or (ii) if clause (i) foregoing is not applicable,
30 he or she is domiciled in and spends a substantial part of his or her
31 working time in the service of his or her employer in this or such
32 other state;

33 (b) "Workers' compensation law" includes "occupational disease law"
34 for the purposes of this section.

35 (5) A worker whose duties require him or her to travel regularly in
36 the service of his or her employer in this and one or more other states
37 may agree in writing with his or her employer that his or her
38 employment is principally localized in this or another state, and,
39 unless such other state refuses jurisdiction, such agreement shall

1 govern as to any injury occurring after the effective date of the
2 agreement.

3 (6) The director shall be authorized to enter into agreements with
4 the appropriate agencies of other states and provinces of Canada which
5 administer their workers' compensation law with respect to conflicts of
6 jurisdiction and the assumption of jurisdiction in cases where the
7 contract of employment arises in one state or province and the injury
8 occurs in another, and when any such agreement has been executed and
9 promulgated as a regulation of the department under chapter 34.05 RCW,
10 it shall bind all employers and workers subject to this title and the
11 jurisdiction of this title shall be governed by this regulation.

12 **Sec. 2.** RCW 51.24.030 and 1987 c 212 s 1701 are each amended to
13 read as follows:

14 (1) If a third person, not in a worker's same employ, is or may
15 become liable to pay damages on account of a worker's injury for which
16 benefits and compensation are provided under this title, the injured
17 worker or beneficiary may elect to seek damages from the third person.

18 (2) In every action brought under this section, the plaintiff shall
19 give notice to the department or self-insurer when the action is filed.
20 The department or self-insurer may file a notice of statutory interest
21 in recovery. When such notice has been filed by the department or
22 self-insurer, the parties shall thereafter serve copies of all notices,
23 motions, pleadings, and other process on the department or self-
24 insurer. The department or self-insurer may then intervene as a party
25 in the action to protect its statutory interest in recovery.

26 (3) For the purposes of this chapter, "injury" shall include any
27 physical or mental condition, disease, ailment or loss, including
28 death, for which compensation and benefits are paid or payable under
29 this title.

30 (4) Damages recoverable by a worker or beneficiary pursuant to the
31 underinsured motorist coverage of an insurance policy shall be subject
32 to this chapter only if the owner of the policy is the employer of the
33 injured worker.

34 (5) For the purposes of this chapter, "recovery" includes all
35 damages except loss of consortium.

36 **Sec. 3.** RCW 51.24.050 and 1984 c 218 s 4 are each amended to read
37 as follows:

1 (1) An election not to proceed against the third person operates as
2 an assignment of the cause of action to the department or self-insurer,
3 which may prosecute or compromise the action in its discretion in the
4 name of the injured worker, beneficiary or legal representative.

5 (2) If an injury to a worker results in the worker's death, the
6 department or self-insurer to which the cause of action has been
7 assigned may petition a court for the appointment of a special personal
8 representative for the limited purpose of maintaining an action under
9 this chapter and chapter 4.20 RCW.

10 (3) If a beneficiary is a minor child, an election not to proceed
11 against a third person on such beneficiary's cause of action may be
12 exercised by the beneficiary's legal custodian or guardian.

13 (4) Any recovery made by the department or self-insurer shall be
14 distributed as follows:

15 (a) The department or self-insurer shall be paid the expenses
16 incurred in making the recovery including reasonable costs of legal
17 services;

18 (b) The injured worker or beneficiary shall be paid twenty-five
19 percent of the balance of the recovery made, which shall not be subject
20 to subsection (5) of this section: PROVIDED, That in the event of a
21 compromise and settlement by the parties, the injured worker or
22 beneficiary may agree to a sum less than twenty-five percent;

23 (c) The department and/or self-insurer shall be paid the
24 compensation and benefits paid to or on behalf of the injured worker or
25 beneficiary by the department and/or self-insurer; and

26 (d) The injured worker or beneficiary shall be paid any remaining
27 balance.

28 (5) Thereafter no payment shall be made to or on behalf of a worker
29 or beneficiary by the department and/or self-insurer for such injury
30 until the amount of any further compensation and benefits shall equal
31 any such remaining balance. Thereafter, such benefits shall be paid by
32 the department and/or self-insurer to or on behalf of the worker or
33 beneficiary as though no recovery had been made from a third person.

34 ~~(6) ((In the case of an employer not qualifying as a self-insurer,~~
35 ~~the department shall make a retroactive adjustment to such employer's~~
36 ~~experience rating in which the third party claim has been included to~~
37 ~~reflect that portion of the award or settlement which is reimbursed for~~
38 ~~compensation and benefits paid and, if the claim is open at the time of~~

1 ~~recovery, applied against further compensation or benefits to which the~~
2 ~~injured worker or beneficiary may be entitled.~~

3 (7)) When the cause of action has been assigned to the self-
4 insurer and compensation and benefits have been paid and/or are payable
5 from state funds for the same injury:

6 (a) The prosecution of such cause of action shall also be for the
7 benefit of the department to the extent of compensation and benefits
8 paid and payable from state funds;

9 (b) Any compromise or settlement of such cause of action which
10 results in less than the entitlement under this title is void unless
11 made with the written approval of the department;

12 (c) The department shall be reimbursed for compensation and
13 benefits paid from state funds;

14 (d) The department shall bear its proportionate share of the costs
15 and reasonable attorneys' fees incurred by the self-insurer in
16 obtaining the award or settlement; and

17 (e) Any remaining balance under subsection (4)(d) of this section
18 shall be applied, under subsection (5) of this section, to reduce the
19 obligations of the department and self-insurer to pay further
20 compensation and benefits in proportion to which the obligations of
21 each bear to the remaining entitlement of the worker or beneficiary.

22 **Sec. 4.** RCW 51.24.060 and 1993 c 496 s 2 are each amended to read
23 as follows:

24 (1) If the injured worker or beneficiary elects to seek damages
25 from the third person, any recovery made shall be distributed as
26 follows:

27 (a) The costs and reasonable attorneys' fees shall be paid
28 proportionately by the injured worker or beneficiary and the department
29 and/or self-insurer: PROVIDED, That the department and/or self-insurer
30 may require court approval of costs and attorneys' fees or may petition
31 a court for determination of the reasonableness of costs and attorneys'
32 fees;

33 (b) The injured worker or beneficiary shall be paid twenty-five
34 percent of the balance of the award: PROVIDED, That in the event of a
35 compromise and settlement by the parties, the injured worker or
36 beneficiary may agree to a sum less than twenty-five percent;

1 (c) The department and/or self-insurer shall be paid the balance of
2 the recovery made, but only to the extent necessary to reimburse the
3 department and/or self-insurer for benefits paid;

4 (i) The department and/or self-insurer shall bear its proportionate
5 share of the costs and reasonable attorneys' fees incurred by the
6 worker or beneficiary to the extent of the benefits paid under this
7 title: PROVIDED, That the department's and/or self-insurer's
8 proportionate share shall not exceed one hundred percent of the costs
9 and reasonable attorneys' fees;

10 (ii) The department's and/or self-insurer's proportionate share of
11 the costs and reasonable attorneys' fees shall be determined by
12 dividing the gross recovery amount into the benefits paid amount and
13 multiplying this percentage times the costs and reasonable attorneys'
14 fees incurred by the worker or beneficiary;

15 (iii) The department's and/or self-insurer's reimbursement share
16 shall be determined by subtracting their proportionate share of the
17 costs and reasonable attorneys' fees from the benefits paid amount;

18 (d) Any remaining balance shall be paid to the injured worker or
19 beneficiary; and

20 (e) Thereafter no payment shall be made to or on behalf of a worker
21 or beneficiary by the department and/or self-insurer for such injury
22 until the amount of any further compensation and benefits shall equal
23 any such remaining balance minus the department's and/or self-insurer's
24 proportionate share of the costs and reasonable attorneys' fees in
25 regards to the remaining balance. This proportionate share shall be
26 determined by dividing the gross recovery amount into the remaining
27 balance amount and multiplying this percentage times the costs and
28 reasonable attorneys' fees incurred by the worker or beneficiary.
29 Thereafter, such benefits shall be paid by the department and/or self-
30 insurer to or on behalf of the worker or beneficiary as though no
31 recovery had been made from a third person.

32 (2) The recovery made shall be subject to a lien by the department
33 and/or self-insurer for its share under this section.

34 (3) The department or self-insurer has sole discretion to
35 compromise the amount of its lien. In deciding whether or to what
36 extent to compromise its lien, the department or self-insurer shall
37 consider at least the following:

1 (a) The likelihood of collection of the award or settlement as may
2 be affected by insurance coverage, solvency, or other factors relating
3 to the third person;

4 (b) Factual and legal issues of liability as between the injured
5 worker or beneficiary and the third person. Such issues include but
6 are not limited to possible contributory negligence and novel theories
7 of liability; and

8 (c) Problems of proof faced in obtaining the award or settlement.

9 ~~(4) ((In the case of an employer not qualifying as a self-insurer,~~
10 ~~the department shall make a retroactive adjustment to such employer's~~
11 ~~experience rating in which the third party claim has been included to~~
12 ~~reflect that portion of the award or settlement which is reimbursed for~~
13 ~~compensation and benefits paid and, if the claim is open at the time of~~
14 ~~recovery, applied against further compensation and benefits to which~~
15 ~~the injured worker or beneficiary may be entitled.~~

16 ~~(5))~~ In an action under this section, the self-insurer may act on
17 behalf and for the benefit of the department to the extent of any
18 compensation and benefits paid or payable from state funds.

19 ~~((+6))~~ (5) It shall be the duty of the person to whom any recovery
20 is paid before distribution under this section to advise the department
21 or self-insurer of the fact and amount of such recovery, the costs and
22 reasonable attorneys' fees associated with the recovery, and to
23 distribute the recovery in compliance with this section.

24 ~~((+7))~~ (6) The distribution of any recovery made by award or
25 settlement of the third party action shall be confirmed by department
26 order, served by registered or certified mail, and shall be subject to
27 chapter 51.52 RCW. In the event the order of distribution becomes
28 final under chapter 51.52 RCW, the director or the director's designee
29 may file with the clerk of any county within the state a warrant in the
30 amount of the sum representing the unpaid lien plus interest accruing
31 from the date the order became final. The clerk of the county in which
32 the warrant is filed shall immediately designate a superior court cause
33 number for such warrant and the clerk shall cause to be entered in the
34 judgment docket under the superior court cause number assigned to the
35 warrant, the name of such worker or beneficiary mentioned in the
36 warrant, the amount of the unpaid lien plus interest accrued and the
37 date when the warrant was filed. The amount of such warrant as
38 docketed shall become a lien upon the title to and interest in all real
39 and personal property of the injured worker or beneficiary against whom

1 the warrant is issued, the same as a judgment in a civil case docketed
2 in the office of such clerk. The sheriff shall then proceed in the
3 same manner and with like effect as prescribed by law with respect to
4 execution or other process issued against rights or property upon
5 judgment in the superior court. Such warrant so docketed shall be
6 sufficient to support the issuance of writs of garnishment in favor of
7 the department in the manner provided by law in the case of judgment,
8 wholly or partially unsatisfied. The clerk of the court shall be
9 entitled to a filing fee of five dollars, which shall be added to the
10 amount of the warrant. A copy of such warrant shall be mailed to the
11 injured worker or beneficiary within three days of filing with the
12 clerk.

13 ~~((+8))~~ (7) The director, or the director's designee, may issue to
14 any person, firm, corporation, municipal corporation, political
15 subdivision of the state, public corporation, or agency of the state,
16 a notice and order to withhold and deliver property of any kind if he
17 or she has reason to believe that there is in the possession of such
18 person, firm, corporation, municipal corporation, political subdivision
19 of the state, public corporation, or agency of the state, property
20 which is due, owing, or belonging to any worker or beneficiary upon
21 whom a warrant has been served by the department for payments due to
22 the state fund. The notice and order to withhold and deliver shall be
23 served by the sheriff of the county or by the sheriff's deputy ~~((7))~~; by
24 certified mail, return receipt requested; or by any authorized
25 representatives of the director. Any person, firm, corporation,
26 municipal corporation, political subdivision of the state, public
27 corporation, or agency of the state upon whom service has been made
28 shall answer the notice within twenty days exclusive of the day of
29 service, under oath and in writing, and shall make true answers to the
30 matters inquired of in the notice and order to withhold and deliver.
31 In the event there is in the possession of the party named and served
32 with such notice and order, any property which may be subject to the
33 claim of the department, such property shall be delivered forthwith to
34 the director or the director's authorized representative upon demand.
35 If the party served and named in the notice and order fails to answer
36 the notice and order within the time prescribed in this section, the
37 court may, after the time to answer such order has expired, render
38 judgment by default against the party named in the notice for the full
39 amount claimed by the director in the notice together with costs. In

1 the event that a notice to withhold and deliver is served upon an
2 employer and the property found to be subject thereto is wages, the
3 employer may assert in the answer to all exemptions provided for by
4 chapter 6.27 RCW to which the wage earner may be entitled.

5 **Sec. 5.** RCW 51.24.090 and 1984 c 218 s 7 are each amended to read
6 as follows:

7 (1) Any compromise or settlement of the third party cause of action
8 by the injured worker or beneficiary which results in less than the
9 entitlement under this title is void unless made with the written
10 approval of the department or self-insurer: PROVIDED, That for the
11 purposes of this chapter, "entitlement" means benefits and compensation
12 paid and ((payable)) estimated by the department to be paid in the
13 future.

14 (2) If a compromise or settlement is void because of subsection (1)
15 of this section, the department or self-insurer may petition the court
16 in which the action was filed for an order assigning the cause of
17 action to the department or self-insurer. If an action has not been
18 filed, the department or self-insurer may proceed as provided in
19 chapter 7.24 RCW.

20 **Sec. 6.** RCW 51.52.060 and 1986 c 200 s 11 are each amended to read
21 as follows:

22 Except as otherwise specifically provided in this section, any
23 worker, beneficiary, employer, health services provider, or other
24 person aggrieved by an order, decision, or award of the department
25 must, before he or she appeals to the courts, file with the board and
26 the director, by mail or personally, within sixty days from the day on
27 which such copy of such order, decision, or award was communicated to
28 such person, a notice of appeal to the board: PROVIDED, That a health
29 services provider or other person aggrieved by a department order or
30 decision making demand, whether with or without penalty, solely for
31 repayment of sums paid to a provider of medical, dental, vocational, or
32 other health services rendered to an industrially injured worker must,
33 before he or she appeals to the courts, file with the board and the
34 director, by mail or personally, within twenty days from the day on
35 which such copy of such order or decision was communicated to the
36 health services provider upon whom the department order or decision was
37 served, a notice of appeal to the board. Within ten days of the date

1 on which an appeal has been granted by the board, the board shall
2 notify the other interested parties thereto of the receipt thereof and
3 shall forward a copy of said notice of appeal to such other interested
4 parties. Within twenty days of the receipt of such notice of the
5 board, the worker or the employer may file with the board a cross-
6 appeal from the order of the department from which the original appeal
7 was taken: PROVIDED, That nothing contained in this section shall be
8 deemed to change, alter or modify the practice or procedure of the
9 department for the payment of awards pending appeal: AND PROVIDED,
10 That failure to file notice of appeal with both the board and the
11 department shall not be ground for denying the appeal if the notice of
12 appeal is filed with either the board or the department: AND PROVIDED,
13 That, if within the time limited for filing a notice of appeal to the
14 board from an order, decision, or award of the department, the
15 department shall direct the submission of further evidence or the
16 investigation of any further fact, the time for filing such notice of
17 appeal shall not commence to run until such person shall have been
18 advised in writing of the final decision of the department in the
19 matter: PROVIDED, FURTHER, That in the event the department shall
20 direct the submission of further evidence or the investigation of any
21 further fact, as above provided, the department shall render a final
22 order, decision, or award within ninety days from the date such further
23 submission of evidence or investigation of further fact is ordered
24 which time period may be extended by the department for good cause
25 stated in writing to all interested parties for an additional ninety
26 days: PROVIDED, FURTHER, That the department, either within the time
27 limited for appeal, or within thirty days after receiving a notice of
28 appeal, may modify, reverse or change any order, decision, or award, or
29 may hold any such order, decision, or award in abeyance for a period of
30 ninety days which time period may be extended by the department for
31 good cause stated in writing to all interested parties for an
32 additional ninety days pending further investigation in light of the
33 allegations of the notice of appeal, and the board shall thereupon deny
34 the appeal, without prejudice to the appellant's right to appeal from
35 any subsequent determinative order issued by the department.

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