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SENATE BILL 5508

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State of Washington

64th Legislature

2015 Regular Session

By Senators Braun, Baumgartner, Rivers, Dammeier, Schoesler, and Bailey

Read first time 01/22/15. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to recovery for purposes of legal actions under  
2 the industrial insurance statutes; amending RCW 51.24.030, 51.24.050,  
3 and 51.24.060; and creating a new section.

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

5 **Sec. 1.** RCW 51.24.030 and 1995 c 199 s 2 are each amended to  
6 read as follows:

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

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

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

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

9 (5) For the purposes of this chapter, "recovery" includes all  
10 economic and noneconomic damages except loss of consortium.

11 **Sec. 2.** RCW 51.24.050 and 1995 c 199 s 3 are each amended to  
12 read as follows:

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

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

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

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

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

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

37 (c) The department and/or self-insurer shall be paid ((the  
38 ~~compensation and benefits paid to or on behalf of the injured worker~~  
39 ~~or beneficiary by the department and/or self-insurer)) from the~~

1 remaining recovery balance the amount it paid to or on behalf of the  
2 injured worker or beneficiary in benefits; and

3 (d) The injured worker or beneficiary shall be paid any remaining  
4 balance.

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

12 (6) When the cause of action has been assigned to the self-  
13 insurer and compensation and benefits have been paid and/or are  
14 payable from state funds for the same injury:

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

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

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

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

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

31 **Sec. 3.** RCW 51.24.060 and 2011 c 290 s 4 are each amended to  
32 read as follows:

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

36 (a) The costs and reasonable attorneys' fees shall be paid  
37 proportionately by the injured worker or beneficiary and the  
38 department and/or self-insurer: PROVIDED, That the department and/or  
39 self-insurer may require court approval of costs and attorneys' fees

1 or may petition a court for determination of the reasonableness of  
2 costs and attorneys' fees;

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

7 (c) The department and/or self-insurer shall be paid the balance  
8 of the recovery made, but only to the extent necessary to reimburse  
9 the department and/or self-insurer for ~~((benefits paid))~~ the amount  
10 it paid to or on behalf of the injured worker or beneficiary in  
11 benefits;

12 (i) The department and/or self-insurer shall bear its  
13 proportionate share of the costs and reasonable attorneys' fees  
14 incurred by the worker or beneficiary to the extent of the benefits  
15 paid under this title: PROVIDED, That the department's and/or self-  
16 insurer's proportionate share shall not exceed one hundred percent of  
17 the costs and reasonable attorneys' fees;

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

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

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

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

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

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

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

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

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

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

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

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

1 clerk. The sheriff shall then proceed in the same manner and with  
2 like effect as prescribed by law with respect to execution or other  
3 process issued against rights or property upon judgment in the  
4 superior court. Such warrant so docketed shall be sufficient to  
5 support the issuance of writs of garnishment in favor of the  
6 department in the manner provided by law in the case of judgment,  
7 wholly or partially unsatisfied. The clerk of the court shall be  
8 entitled to a filing fee under RCW 36.18.012(10), which shall be  
9 added to the amount of the warrant. A copy of such warrant shall be  
10 mailed to the injured worker or beneficiary within three days of  
11 filing with the clerk.

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

1 employer and the property found to be subject thereto is wages, the  
2 employer may assert in the answer to all exemptions provided for by  
3 chapter 6.27 RCW to which the wage earner may be entitled.

4 NEW SECTION. **Sec. 4.** (1) This act is an explicit restatement of  
5 the legislature's original intent to grant the department of labor  
6 and industries or a self-insured employer the authority to reimburse  
7 itself from a third-party recovery for the amount paid on behalf of  
8 the worker or beneficiary for all economic and noneconomic damages  
9 except loss of consortium.

10 (2) This act applies to all causes of action commenced on or  
11 after the effective date of this section, regardless of when the  
12 cause of action arose. To this extent, this act applies  
13 retroactively, but in all other respects it applies prospectively.

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