

# FINAL BILL REPORT

## EHB 1264

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C 496 L 93  
Synopsis as Enacted

**Brief Description:** Regulating third party recoveries in workers' compensation cases.

By Representatives Heavey and R. Meyers.

House Committee on Commerce & Labor  
Senate Committee on Labor & Commerce

**Background:** Under the industrial insurance law, an injured worker may not sue his or her employer or co-worker who may have negligently caused the worker's injury. The worker's exclusive remedy is the compensation available under the industrial insurance law. However, if a third party caused the injury, the worker may bring a personal injury suit against the third party.

The trier of fact in the third party lawsuit must determine the fault of all entities that caused the injury, including entities immune from liability. If the worker recovers judgment in the third party suit, the Department of Labor and Industries or the self-insured employer is reimbursed for the benefits paid to the worker under the industrial insurance system, unless the employer or co-worker is found to be at fault.

After the award in the third party suit is distributed and the remaining balance paid to the worker, the worker is not entitled to further industrial insurance benefits until the worker has received medical services, has lost time from work, or has suffered increased disability in monetary amounts that equal the remaining balance paid to the worker.

**Summary:** The requirement for the trier of fact in a personal injury lawsuit to determine the fault of all the parties is changed. The trier of fact will not determine the fault of entities immune from liability under the industrial insurance law, such as employers. The total fault attributed to at-fault entities must equal 100 percent.

The statutory formula is amended that determines reimbursement for the Department of Labor and Industries or the self-insured employer after the injured worker recovers damages in a civil suit against a third party:

- (1) Provisions are deleted that made the right to reimbursement dependent on the determination of employer or co-employee fault.
- (2) The distribution formula is based on the benefits paid and not on future benefits payable.
- (3) The department's or self-insurer's share of the costs and fees is determined from the percentage relationship that the gross recovery bears to the benefits paid. The department's or self-insurer's share of the costs and reasonable attorneys' fees may not exceed 100 percent of those costs and fees.
- (4) The reimbursement share is determined by subtracting the department's or self-insurer's proportionate share of the costs and fees from the amount of benefits paid.

After the remaining balance of the recovery is paid to the worker, the worker is not entitled to further industrial insurance benefits until the amount of medical services and other costs of the worker equals an amount that is calculated by subtracting from the remaining balance the department's or self-insurer's proportionate share of the costs and fees.

The bill applies to all causes of action that the parties have not settled or in which judgment has not been entered prior to July 1, 1993.

**Votes on Final Passage:**

House	93	3
Senate	44	3

**Effective:** July 1, 1993