

SENATE BILL REPORT

EHB 1264

AS REPORTED BY COMMITTEE ON LABOR & COMMERCE, MARCH 25, 1993

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

SPONSORS: Representatives Heavey and R. Meyers

HOUSE COMMITTEE ON COMMERCE & LABOR

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass.

Signed by Senators Moore, Chairman; Prentice, Vice Chairman; Amondson, Cantu, Fraser, Newhouse, Pelz, Prince, Sutherland, and Wojahn.

Staff: Dave Cheal (786-7576)

Hearing Dates: March 18, 1993; March 25, 1993

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 suit against the third party.

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 in the incident causing the worker's injury.

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 amount of further benefits equals the remaining balance distributed to the worker.

SUMMARY:

The determination of the fault of the parties in a personal injury or property damage lawsuit is changed to exclude determination of the fault of parties immune from liability under the industrial insurance law. The sum of the total fault attributed to at-fault parties 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 further benefits 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 act 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.

Appropriation: none

Revenue: none

Fiscal Note: requested

TESTIMONY FOR:

The statute regarding third party worker compensation suits is very complex, and its meaning regarding distribution of proceeds and responsibility for fees and costs is frequently litigated. A clearer, more workable set of third-party action rules will result from this bill. The department, claimant's attorneys, labor and business have worked out and support these changes.

TESTIMONY AGAINST: None

TESTIFIED: Dennis Martin; Patrick LePley; Clif Finch; Brett Buckley