
ENGROSSED HOUSE BILL 1264

State of Washington 53rd Legislature 1993 Regular Session

By Representatives Heavey and R. Meyers

Read first time 01/20/93. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to third party recoveries in workers' compensation
2 cases; amending RCW 4.22.070 and 51.24.060; creating a new section;
3 providing an effective date; and declaring an emergency.

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

5 **Sec. 1.** RCW 4.22.070 and 1986 c 305 s 401 are each amended to read
6 as follows:

7 (1) In all actions involving fault of more than one entity, the
8 trier of fact shall determine the percentage of the total fault which
9 is attributable to every entity which caused the claimant's damages(~~(7~~
10 ~~including)) except entities immune from liability to the claimant under
11 Title 51 RCW. The sum of the percentages of the total fault attributed
12 to at-fault entities shall equal one hundred percent. The entities
13 whose fault shall be determined include the claimant or person
14 suffering personal injury or incurring property damage, defendants,
15 third-party defendants, entities released by the claimant, entities
16 with any other individual defense against the claimant, and entities
17 immune from liability to the claimant ((~~and entities with any other~~
18 individual defense against the claimant)), but shall not include those
19 entities immune from liability to the claimant under Title 51 RCW.~~

1 Judgment shall be entered against each defendant except those who have
2 been released by the claimant or are immune from liability to the
3 claimant or have prevailed on any other individual defense against the
4 claimant in an amount which represents that party's proportionate share
5 of the claimant's total damages. The liability of each defendant shall
6 be several only and shall not be joint except:

7 (a) A party shall be responsible for the fault of another person or
8 for payment of the proportionate share of another party where both were
9 acting in concert or when a person was acting as an agent or servant of
10 the party.

11 (b) If the trier of fact determines that the claimant or party
12 suffering bodily injury or incurring property damages was not at fault,
13 the defendants against whom judgment is entered shall be jointly and
14 severally liable for the sum of their proportionate shares of the
15 claimants total damages.

16 (2) If a defendant is jointly and severally liable under one of the
17 exceptions listed in subsections (1)(a) or (1)(b) of this section, such
18 defendant's rights to contribution against another jointly and
19 severally liable defendant, and the effect of settlement by either such
20 defendant, shall be determined under RCW 4.22.040, 4.22.050, and
21 4.22.060.

22 (3)(a) Nothing in this section affects any cause of action relating
23 to hazardous wastes or substances or solid waste disposal sites.

24 (b) Nothing in this section shall affect a cause of action arising
25 from the tortious interference with contracts or business relations.

26 (c) Nothing in this section shall affect any cause of action
27 arising from the manufacture or marketing of a fungible product in a
28 generic form which contains no clearly identifiable shape, color, or
29 marking.

30 **Sec. 2.** RCW 51.24.060 and 1987 c 442 s 1118 are each amended to
31 read as follows:

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

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

1 a court for determination of the reasonableness of costs and attorneys'
2 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 of
8 the recovery made, but only to the extent necessary to reimburse the
9 department and/or self-insurer for ~~((compensation and))~~ benefits paid;

10 (i) The department and/or self-insurer shall bear its proportionate
11 share of the costs and reasonable attorneys' fees incurred by the
12 worker or beneficiary to the extent of the benefits paid ~~((or payable))~~
13 under this title: PROVIDED, That the department's ~~((or))~~ and/or self-
14 insurer's ~~((may require court approval of costs and attorneys' fees or~~
15 ~~may petition a court for determination of the reasonableness of costs~~
16 ~~and))~~ proportionate share shall not exceed one hundred percent of the
17 costs and reasonable attorneys' fees((-))i

18 (ii) ~~((The sum representing the department's and/or self-insurer's~~
19 ~~proportionate share shall not be subject to subsection (1) (d) and (e)~~
20 ~~of this section.))~~ The department's and/or self-insurer's
21 proportionate share of the costs and reasonable attorneys' fees shall
22 be determined by dividing the gross recovery amount into the benefits
23 paid amount and multiplying this percentage times the costs and
24 reasonable attorneys' fees incurred by the worker or beneficiary;

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

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

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

1 insurer to or on behalf of the worker or beneficiary as though no
2 recovery had been made from a third person((;

3 ~~(f) If the employer or a co-employee are determined under RCW~~
4 ~~4.22.070 to be at fault, (c) and (e) of this subsection do not apply~~
5 ~~and benefits shall be paid by the department and/or self-insurer to or~~
6 ~~on behalf of the worker or beneficiary as though no recovery had been~~
7 ~~made from a third person)).~~

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

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

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

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

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

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

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

32 (6) It shall be the duty of the person to whom any recovery is paid
33 before distribution under this section to advise the department or
34 self-insurer of the fact and amount of such recovery, the costs and
35 reasonable attorneys' fees associated with the recovery, and to
36 distribute the recovery in compliance with this section.

37 (7) The distribution of any recovery made by award or settlement of
38 the third party action shall be confirmed by department order, served
39 by registered or certified mail, and shall be subject to chapter 51.52

1 RCW. In the event the order of distribution becomes final under
2 chapter 51.52 RCW, the director or the director's designee may file
3 with the clerk of any county within the state a warrant in the amount
4 of the sum representing the unpaid lien plus interest accruing from the
5 date the order became final. The clerk of the county in which the
6 warrant is filed shall immediately designate a superior court cause
7 number for such warrant and the clerk shall cause to be entered in the
8 judgment docket under the superior court cause number assigned to the
9 warrant, the name of such worker or beneficiary mentioned in the
10 warrant, the amount of the unpaid lien plus interest accrued and the
11 date when the warrant was filed. The amount of such warrant as
12 docketed shall become a lien upon the title to and interest in all real
13 and personal property of the injured worker or beneficiary against whom
14 the warrant is issued, the same as a judgment in a civil case docketed
15 in the office of such clerk. The sheriff shall then proceed in the
16 same manner and with like effect as prescribed by law with respect to
17 execution or other process issued against rights or property upon
18 judgment in the superior court. Such warrant so docketed shall be
19 sufficient to support the issuance of writs of garnishment in favor of
20 the department in the manner provided by law in the case of judgment,
21 wholly or partially unsatisfied. The clerk of the court shall be
22 entitled to a filing fee of five dollars, which shall be added to the
23 amount of the warrant. A copy of such warrant shall be mailed to the
24 injured worker or beneficiary within three days of filing with the
25 clerk.

26 (8) The director, or the director's designee, may issue to any
27 person, firm, corporation, municipal corporation, political subdivision
28 of the state, public corporation, or agency of the state, a notice and
29 order to withhold and deliver property of any kind if he or she has
30 reason to believe that there is in the possession of such person, firm,
31 corporation, municipal corporation, political subdivision of the state,
32 public corporation, or agency of the state, property which is due,
33 owing, or belonging to any worker or beneficiary upon whom a warrant
34 has been served by the department for payments due to the state fund.
35 The notice and order to withhold and deliver shall be served by the
36 sheriff of the county or by the sheriff's deputy, or by any authorized
37 representatives of the director. Any person, firm, corporation,
38 municipal corporation, political subdivision of the state, public
39 corporation, or agency of the state upon whom service has been made

1 shall answer the notice within twenty days exclusive of the day of
2 service, under oath and in writing, and shall make true answers to the
3 matters inquired of in the notice and order to withhold and deliver.
4 In the event there is in the possession of the party named and served
5 with such notice and order, any property which may be subject to the
6 claim of the department, such property shall be delivered forthwith to
7 the director or the director's authorized representative upon demand.
8 If the party served and named in the notice and order fails to answer
9 the notice and order within the time prescribed in this section, the
10 court may, after the time to answer such order has expired, render
11 judgment by default against the party named in the notice for the full
12 amount claimed by the director in the notice together with costs. In
13 the event that a notice to withhold and deliver is served upon an
14 employer and the property found to be subject thereto is wages, the
15 employer may assert in the answer to all exemptions provided for by
16 chapter 6.27 RCW to which the wage earner may be entitled.

17 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
18 preservation of the public peace, health, or safety, or support of the
19 state government and its existing public institutions, and shall take
20 effect July 1, 1993.

21 NEW SECTION. **Sec. 4.** This act applies to all causes of action
22 that the parties have not settled or in which judgment has not been
23 entered prior to July 1, 1993.

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