
HOUSE BILL 1353

State of Washington

53rd Legislature

1993 Regular Session

By Representatives G. Cole, Franklin, Heavey and King; by request of Department of Labor & Industries

Read first time 01/25/93. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to asbestos disease benefits; amending RCW
2 51.12.102; creating a new section; providing an effective date; and
3 declaring an emergency.

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

5 **Sec. 1.** RCW 51.12.102 and 1988 c 271 s 1 are each amended to read
6 as follows:

7 (1) The department shall furnish the benefits provided under this
8 title to any worker or beneficiary who may have a right or claim for
9 benefits under the maritime laws of the United States resulting from an
10 asbestos-related disease if (a) there are objective clinical findings
11 to substantiate that the worker has an asbestos-related claim for
12 occupational disease and (b) the worker's employment history has a
13 prima facie indicia of injurious exposure to asbestos fibers while
14 employed in the state of Washington in employment covered under this
15 title. The department shall render a decision as to the liable insurer
16 and shall continue to pay benefits until the liable insurer initiates
17 payments or benefits are otherwise properly terminated under this
18 title.

1 (2) The benefits authorized under subsection (1) of this section
2 shall be paid from the medical aid fund, with the self-insurers and the
3 state fund each paying a pro rata share, based on number of worker
4 hours, of the costs necessary to fund the payments. For the purposes
5 of this subsection only, the employees of self-insured employers shall
6 pay an amount equal to one-half of the share charged to the self-
7 insured employer.

8 (3) If the department determines that the benefits paid under
9 subsection (1) of this section are owed to the worker or beneficiary by
10 a self-insurer or the state fund, then the self-insurer or state fund
11 shall reimburse the medical aid fund for all benefits paid and costs
12 incurred by the fund.

13 (4) If the department determines that the benefits paid under
14 subsection (1) of this section are owed to the worker or beneficiary by
15 a federal program other than the federal social security, old age
16 survivors, and disability insurance act, 42 U.S.C. or an insurer under
17 the maritime laws of the United States:

18 (a) The department shall pursue the federal program insurer on
19 behalf of the worker or beneficiary to recover from the federal program
20 insurer the benefits due the worker or beneficiary and on its own
21 behalf to recover the benefits previously paid to the worker or
22 beneficiary and costs incurred;

23 (b) For the purpose of pursuing recovery under this subsection, the
24 department shall be subrogated to all of the rights of the worker or
25 beneficiary receiving compensation under subsection (1) of this
26 section; and

27 (c) The department shall not pursue the worker or beneficiary for
28 the recovery of benefits paid under subsection (1) of this section
29 unless the worker or beneficiary receives recovery from the federal
30 program insurer, in addition to receiving benefits authorized under
31 this section. The director may exercise his or her discretion to
32 waive, in whole or in part, the recovery of any such benefits where the
33 recovery would be against equity and good conscience.

34 (d) Actions pursued against federal program insurers determined by
35 the department to be liable for benefits under this section may be
36 prosecuted by special assistant attorneys general. The attorney
37 general shall select special assistant attorneys general from a list
38 compiled by the department and the Washington state bar association.
39 The attorney general, in conjunction with the department and the

1 Washington state bar association, shall adopt rules and regulations
2 outlining the criteria and the procedure by which private attorneys may
3 have their names placed on the list of attorneys available for
4 appointment as special assistant attorneys general to litigate actions
5 under this subsection. Attorneys' fees and costs shall be paid from
6 any recovery made. Where no recovery is made, or the recovery is
7 insufficient to cover approved costs, the difference shall be paid from
8 the medical aid fund.

9 (5) The provisions of subsection (1) of this section shall not
10 apply if the worker or beneficiary refuses, for whatever reason, to
11 assist the department in making a proper determination of coverage. If
12 a worker or beneficiary refuses to cooperate with the department, self-
13 insurer, or federal program insurer by failing to provide information
14 that, in the opinion of the department, is relevant in determining the
15 liable insurer, or if a worker refuses to submit to medical
16 examination, or obstructs or fails to cooperate with the examination,
17 or if the worker or beneficiary fails to cooperate with the department
18 in pursuing benefits from the federal program insurer, the department
19 shall reject the application for benefits. No information obtained
20 under this section is subject to release by subpoena or other legal
21 process.

22 (6) The amount of any third party recovery by the worker or
23 beneficiary shall be subject to a lien by the department to the full
24 extent that the medical aid fund has not been otherwise reimbursed by
25 another insurer. Reimbursement shall be made immediately to the
26 medical aid fund upon recovery from the third party suit. If the
27 department determines that the benefits paid under subsection (1) of
28 this section are owed to the worker or beneficiary by a federal program
29 insurer, the department shall not participate in the costs or
30 attorneys' fees incurred in bringing the third party suit.

31 (~~(7) This section shall expire July 1, 1993.~~)

32 NEW SECTION. Sec. 2. This act applies to all claims without
33 regard to the date of injury or date of filing of the claim.

34 NEW SECTION. Sec. 3. This act is necessary for the immediate
35 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and shall take
2 effect July 1, 1993.

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