

# HOUSE BILL REPORT

## EHB 1264

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As Passed House  
February 17, 1993

**Title:** An act relating to third party recoveries in workers' compensation cases.

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

**Sponsors:** Representatives Heavey and R. Meyers.

**Brief History:**

Reported by House Committee on:  
Commerce and Labor, January 29, 1993, DPA;  
Passed House, February 17, 1993, 93-3.

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**HOUSE COMMITTEE ON COMMERCE AND LABOR**

**Majority Report:** Do pass as amended. Signed by 8 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Lisk, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Horn; King; Springer; and Veloria.

**Staff:** Chris Cordes (786-7117).

**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 of Bill:** The determination of the fault of the parties in a personal injury or property damage law suit 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 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.

**Fiscal Note:** Requested January 26, 1993.

**Effective Date:** The bill contains an emergency clause and takes effect on July 1, 1993.

**Testimony For:** A group of interested parties, including business, labor, trial attorneys, and the department has been working on this issue for some time. The bill amends a very technical statute that is difficult to understand and is frequently litigated, particularly over interpretation of the statutory formula for distribution of third party

awards. The bill clarifies the formula, which should help reduce litigation.

**Testimony Against:** None.

**Witnesses:** Mike Watson, Department of Labor and Industries; Dennis Martin and Patrick LePley, Washington State Trial Lawyers Association; and Jeff Johnson, Washington State Labor Council.