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SENATE BILL 6279

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State of Washington

53rd Legislature

1994 Regular Session

By Senators Moore, Amondson, Sutherland and Winsley; by request of Department of Labor & Industries

Read first time 01/18/94. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to the calculation of employers' experience  
2 ratings; and amending RCW 51.24.050 and 51.24.060.

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

4 **Sec. 1.** RCW 51.24.050 and 1984 c 218 s 4 are each amended to read  
5 as follows:

6 (1) An election not to proceed against the third person operates as  
7 an assignment of the cause of action to the department or self-insurer,  
8 which may prosecute or compromise the action in its discretion in the  
9 name of the injured worker, beneficiary or legal representative.

10 (2) If an injury to a worker results in the worker's death, the  
11 department or self-insurer to which the cause of action has been  
12 assigned may petition a court for the appointment of a special personal  
13 representative for the limited purpose of maintaining an action under  
14 this chapter and chapter 4.20 RCW.

15 (3) If a beneficiary is a minor child, an election not to proceed  
16 against a third person on such beneficiary's cause of action may be  
17 exercised by the beneficiary's legal custodian or guardian.

18 (4) Any recovery made by the department or self-insurer shall be  
19 distributed as follows:

1 (a) The department or self-insurer shall be paid the expenses  
2 incurred in making the recovery including reasonable costs of legal  
3 services;

4 (b) The injured worker or beneficiary shall be paid twenty-five  
5 percent of the balance of the recovery made, which shall not be subject  
6 to subsection (5) of this section: PROVIDED, That in the event of a  
7 compromise and settlement by the parties, the injured worker or  
8 beneficiary may agree to a sum less than twenty-five percent;

9 (c) The department and/or self-insurer shall be paid the  
10 compensation and benefits paid to or on behalf of the injured worker or  
11 beneficiary by the department and/or self-insurer; and

12 (d) The injured worker or beneficiary shall be paid any remaining  
13 balance.

14 (5) Thereafter no payment shall be made to or on behalf of a worker  
15 or beneficiary by the department and/or self-insurer for such injury  
16 until the amount of any further compensation and benefits shall equal  
17 any such remaining balance. Thereafter, such benefits shall be paid by  
18 the department and/or self-insurer to or on behalf of the worker or  
19 beneficiary as though no recovery had been made from a third person.

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

27 ~~(7))~~ When the cause of action has been assigned to the self-  
28 insurer and compensation and benefits have been paid and/or are payable  
29 from state funds for the same injury:

30 (a) The prosecution of such cause of action shall also be for the  
31 benefit of the department to the extent of compensation and benefits  
32 paid and payable from state funds;

33 (b) Any compromise or settlement of such cause of action which  
34 results in less than the entitlement under this title is void unless  
35 made with the written approval of the department;

36 (c) The department shall be reimbursed for compensation and  
37 benefits paid from state funds;

1 (d) The department shall bear its proportionate share of the costs  
2 and reasonable attorneys' fees incurred by the self-insurer in  
3 obtaining the award or settlement; and

4 (e) Any remaining balance under subsection (4)(d) of this section  
5 shall be applied, under subsection (5) of this section, to reduce the  
6 obligations of the department and self-insurer to pay further  
7 compensation and benefits in proportion to which the obligations of  
8 each bear to the remaining entitlement of the worker or beneficiary.

9 **Sec. 2.** RCW 51.24.060 and 1993 c 496 s 2 are each amended to read  
10 as follows:

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

14 (a) The costs and reasonable attorneys' fees shall be paid  
15 proportionately by the injured worker or beneficiary and the department  
16 and/or self-insurer: PROVIDED, That the department and/or self-insurer  
17 may require court approval of costs and attorneys' fees or may petition  
18 a court for determination of the reasonableness of costs and attorneys'  
19 fees;

20 (b) The injured worker or beneficiary shall be paid twenty-five  
21 percent of the balance of the award: PROVIDED, That in the event of a  
22 compromise and settlement by the parties, the injured worker or  
23 beneficiary may agree to a sum less than twenty-five percent;

24 (c) The department and/or self-insurer shall be paid the balance of  
25 the recovery made, but only to the extent necessary to reimburse the  
26 department and/or self-insurer for benefits paid;

27 (i) The department and/or self-insurer shall bear its proportionate  
28 share of the costs and reasonable attorneys' fees incurred by the  
29 worker or beneficiary to the extent of the benefits paid under this  
30 title: PROVIDED, That the department's and/or self-insurer's  
31 proportionate share shall not exceed one hundred percent of the costs  
32 and reasonable attorneys' fees;

33 (ii) The department's and/or self-insurer's proportionate share of  
34 the costs and reasonable attorneys' fees shall be determined by  
35 dividing the gross recovery amount into the benefits paid amount and  
36 multiplying this percentage times the costs and reasonable attorneys'  
37 fees incurred by the worker or beneficiary;

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

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

6 (e) Thereafter no payment shall be made to or on behalf of a worker  
7 or beneficiary by the department and/or self-insurer for such injury  
8 until the amount of any further compensation and benefits shall equal  
9 any such remaining balance minus the department's and/or self-insurer's  
10 proportionate share of the costs and reasonable attorneys' fees in  
11 regards to the remaining balance. This proportionate share shall be  
12 determined by dividing the gross recovery amount into the remaining  
13 balance amount and multiplying this percentage times the costs and  
14 reasonable attorneys' fees incurred by the worker or beneficiary.  
15 Thereafter, such benefits shall be paid by the department and/or self-  
16 insurer to or on behalf of the worker or beneficiary as though no  
17 recovery had been made from a third person.

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

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

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

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

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

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

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

4       ~~((6))~~ (5) It shall be the duty of the person to whom any recovery  
5 is paid before distribution under this section to advise the department  
6 or self-insurer of the fact and amount of such recovery, the costs and  
7 reasonable attorneys' fees associated with the recovery, and to  
8 distribute the recovery in compliance with this section.

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

37       ~~((8))~~ (7) The director, or the director's designee, may issue to  
38 any person, firm, corporation, municipal corporation, political  
39 subdivision of the state, public corporation, or agency of the state,

1 a notice and order to withhold and deliver property of any kind if he  
2 or she has reason to believe that there is in the possession of such  
3 person, firm, corporation, municipal corporation, political subdivision  
4 of the state, public corporation, or agency of the state, property  
5 which is due, owing, or belonging to any worker or beneficiary upon  
6 whom a warrant has been served by the department for payments due to  
7 the state fund. The notice and order to withhold and deliver shall be  
8 served by the sheriff of the county or by the sheriff's deputy, or by  
9 any authorized representatives of the director. Any person, firm,  
10 corporation, municipal corporation, political subdivision of the state,  
11 public corporation, or agency of the state upon whom service has been  
12 made shall answer the notice within twenty days exclusive of the day of  
13 service, under oath and in writing, and shall make true answers to the  
14 matters inquired of in the notice and order to withhold and deliver.  
15 In the event there is in the possession of the party named and served  
16 with such notice and order, any property which may be subject to the  
17 claim of the department, such property shall be delivered forthwith to  
18 the director or the director's authorized representative upon demand.  
19 If the party served and named in the notice and order fails to answer  
20 the notice and order within the time prescribed in this section, the  
21 court may, after the time to answer such order has expired, render  
22 judgment by default against the party named in the notice for the full  
23 amount claimed by the director in the notice together with costs. In  
24 the event that a notice to withhold and deliver is served upon an  
25 employer and the property found to be subject thereto is wages, the  
26 employer may assert in the answer to all exemptions provided for by  
27 chapter 6.27 RCW to which the wage earner may be entitled.

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