
SENATE BILL 6409

State of Washington

53rd Legislature

1994 Regular Session

By Senator Hargrove

Read first time 01/21/94. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to actions for injury or death against third
2 persons; and amending RCW 51.24.050.

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
9 the name of the injured worker, beneficiary, or legal representative.
10 The department or self-insurer has a fiduciary duty to the injured
11 worker with respect to the resolution of the claim. In a case that has
12 been assigned to the department, an employer has a cause of action to
13 enforce the fiduciary duty to the extent the employer's cost experience
14 under the claim is adversely affected.

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

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

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

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

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

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

17 (d) The injured worker or beneficiary shall be paid any remaining
18 balance.

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

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

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

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

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

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

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

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

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