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SENATE BILL 5126

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State of Washington

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By Senators Holmquist Newbry, Braun, King, Baumgartner, Rivers, Benton, Becker, Ericksen, Bailey, Litzow, Schoesler, Hill, Honeyford, Tom, and Hewitt

Read first time 01/18/13. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to recovery for purposes of legal actions under the  
2 industrial insurance statutes; amending RCW 51.24.030, 51.24.050, and  
3 51.24.060; and creating a new section.

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

5 **Sec. 1.** RCW 51.24.030 and 1995 c 199 s 2 are each amended to read  
6 as follows:

7 (1) If a third person, not in a worker's same employ, is or may  
8 become liable to pay damages on account of a worker's injury for which  
9 benefits and compensation are provided under this title, the injured  
10 worker or beneficiary may elect to seek damages from the third person.

11 (2) In every action brought under this section, the plaintiff shall  
12 give notice to the department or self-insurer when the action is filed.  
13 The department or self-insurer may file a notice of statutory interest  
14 in recovery. When such notice has been filed by the department or  
15 self-insurer, the parties shall thereafter serve copies of all notices,  
16 motions, pleadings, and other process on the department or self-  
17 insurer. The department or self-insurer may then intervene as a party  
18 in the action to protect its statutory interest in recovery.

1 (3) For the purposes of this chapter, "injury" shall include any  
2 physical or mental condition, disease, ailment or loss, including  
3 death, for which compensation and benefits are paid or payable under  
4 this title.

5 (4) Damages recoverable by a worker or beneficiary pursuant to the  
6 underinsured motorist coverage of an insurance policy shall be subject  
7 to this chapter only if the owner of the policy is the employer of the  
8 injured worker.

9 (5) For the purposes of this chapter, "recovery" includes all  
10 economic and noneconomic damages except loss of consortium.

11 **Sec. 2.** RCW 51.24.050 and 1995 c 199 s 3 are each amended to read  
12 as follows:

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

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

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

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

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

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

35 (c) The department and/or self-insurer shall be paid (~~the~~  
36 ~~compensation and benefits paid to or on behalf of the injured worker or~~

1 ~~beneficiary by the department and/or self-insurer))~~ from the remaining  
2 recovery balance the amount it paid to or on behalf of the injured  
3 worker or beneficiary in benefits; and

4 (d) The injured worker or beneficiary shall be paid any remaining  
5 balance.

6 (5) 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. Thereafter, such benefits shall be paid by  
10 the department and/or self-insurer to or on behalf of the worker or  
11 beneficiary as though no recovery had been made from a third person.

12 (6) When the cause of action has been assigned to the self-insurer  
13 and compensation and benefits have been paid and/or are payable from  
14 state funds for the same injury:

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

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

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

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

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

31 **Sec. 3.** RCW 51.24.060 and 2011 c 290 s 4 are each amended to read  
32 as follows:

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

36 (a) The costs and reasonable attorneys' fees shall be paid  
37 proportionately by the injured worker or beneficiary and the department

1 and/or self-insurer: PROVIDED, That the department and/or self-insurer  
2 may require court approval of costs and attorneys' fees or may petition  
3 a court for determination of the reasonableness of costs and attorneys'  
4 fees;

5 (b) The injured worker or beneficiary shall be paid twenty-five  
6 percent of the balance of the award: 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 balance of  
10 the recovery made, but only to the extent necessary to reimburse the  
11 department and/or self-insurer for (~~benefits paid~~) the amount it paid  
12 to or on behalf of the injured worker or beneficiary in benefits;

13 (i) The department and/or self-insurer shall bear its proportionate  
14 share of the costs and reasonable attorneys' fees incurred by the  
15 worker or beneficiary to the extent of the benefits paid under this  
16 title: PROVIDED, That the department's and/or self-insurer's  
17 proportionate share shall not exceed one hundred percent of the costs  
18 and reasonable attorneys' fees;

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

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

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

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

1 Thereafter, such benefits shall be paid by the department and/or self-  
2 insurer to or on behalf of the worker or beneficiary as though no  
3 recovery had been made from a third person.

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

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

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

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

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

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

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

26 (6) The distribution of any recovery made by award or settlement of  
27 the third party action shall be confirmed by department order, served  
28 by a method for which receipt can be confirmed or tracked, and shall be  
29 subject to chapter 51.52 RCW. In the event the order of distribution  
30 becomes final under chapter 51.52 RCW, the director or the director's  
31 designee may file with the clerk of any county within the state a  
32 warrant in the amount of the sum representing the unpaid lien plus  
33 interest accruing from the date the order became final. The clerk of  
34 the county in which the warrant is filed shall immediately designate a  
35 superior court cause number for such warrant and the clerk shall cause  
36 to be entered in the judgment docket under the superior court cause  
37 number assigned to the warrant, the name of such worker or beneficiary  
38 mentioned in the warrant, the amount of the unpaid lien plus interest

1 accrued and the date when the warrant was filed. The amount of such  
2 warrant as docketed shall become a lien upon the title to and interest  
3 in all real and personal property of the injured worker or beneficiary  
4 against whom the warrant is issued, the same as a judgment in a civil  
5 case docketed in the office of such clerk. The sheriff shall then  
6 proceed in the same manner and with like effect as prescribed by law  
7 with respect to execution or other process issued against rights or  
8 property upon judgment in the superior court. Such warrant so docketed  
9 shall be sufficient to support the issuance of writs of garnishment in  
10 favor of the department in the manner provided by law in the case of  
11 judgment, wholly or partially unsatisfied. The clerk of the court  
12 shall be entitled to a filing fee under RCW 36.18.012(10), which shall  
13 be added to the amount of the warrant. A copy of such warrant shall be  
14 mailed to the injured worker or beneficiary within three days of filing  
15 with the clerk.

16 (7) The director, or the director's designee, may issue to any  
17 person, firm, corporation, municipal corporation, political subdivision  
18 of the state, public corporation, or agency of the state, a notice and  
19 order to withhold and deliver property of any kind if he or she has  
20 reason to believe that there is in the possession of such person, firm,  
21 corporation, municipal corporation, political subdivision of the state,  
22 public corporation, or agency of the state, property which is due,  
23 owing, or belonging to any worker or beneficiary upon whom a warrant  
24 has been served by the department for payments due to the state fund.  
25 The notice and order to withhold and deliver shall be served by the  
26 sheriff of the county or by the sheriff's deputy; by a method for which  
27 receipt can be confirmed or tracked; or by any authorized  
28 representatives of the director. Any person, firm, corporation,  
29 municipal corporation, political subdivision of the state, public  
30 corporation, or agency of the state upon whom service has been made  
31 shall answer the notice within twenty days exclusive of the day of  
32 service, under oath and in writing, and shall make true answers to the  
33 matters inquired of in the notice and order to withhold and deliver.  
34 In the event there is in the possession of the party named and served  
35 with such notice and order, any property which may be subject to the  
36 claim of the department, such property shall be delivered forthwith to  
37 the director or the director's authorized representative upon demand.  
38 If the party served and named in the notice and order fails to answer

1 the notice and order within the time prescribed in this section, the  
2 court may, after the time to answer such order has expired, render  
3 judgment by default against the party named in the notice for the full  
4 amount claimed by the director in the notice together with costs. In  
5 the event that a notice to withhold and deliver is served upon an  
6 employer and the property found to be subject thereto is wages, the  
7 employer may assert in the answer to all exemptions provided for by  
8 chapter 6.27 RCW to which the wage earner may be entitled.

9 NEW SECTION. **Sec. 4.** (1) This act is an explicit restatement of  
10 the legislature's original intent to grant the department of labor and  
11 industries or a self-insured employer the authority to reimburse itself  
12 from a third-party recovery for the amount paid on behalf of the worker  
13 or beneficiary for all economic and noneconomic damages except loss of  
14 consortium.

15 (2) This act applies to all causes of action commenced on or after  
16 the effective date of this section, regardless of when the cause of  
17 action arose. To this extent, this act applies retroactively, but in  
18 all other respects it applies prospectively.

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