

RCW 51.12.102 Maritime workers—Asbestos-related disease. (1)

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

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

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

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

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

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

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

(d) Actions pursued against federal program insurers determined by the department to be liable for benefits under this section may be prosecuted by special assistant attorneys general. The attorney general shall select special assistant attorneys general from a list compiled by the department and the Washington state bar association. The attorney general, in conjunction with the department and the Washington state bar association, shall adopt rules and regulations outlining the criteria and the procedure by which private attorneys may have their names placed on the list of attorneys available for appointment as special assistant attorneys general to litigate actions

under this subsection. Attorneys' fees and costs shall be paid in conformity with applicable federal and state law. Any legal costs remaining as an obligation of the department shall be paid from the medical aid fund.

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

(6) The amount of any third party recovery by the worker or beneficiary shall be subject to a lien by the department to the full extent that the medical aid fund has not been otherwise reimbursed by another insurer. Reimbursement shall be made immediately to the medical aid fund upon recovery from the third party suit. If the department determines that the benefits paid under subsection (1) of this section are owed to the worker or beneficiary by a federal program insurer, the department shall not participate in the costs or attorneys' fees incurred in bringing the third party suit. [1993 c 168 § 1; 1988 c 271 § 1.]

Applicability—1993 c 168: "This act applies to all claims without regard to the date of injury or date of filing of the claim." [1993 c 168 § 2.]

Effective date—1993 c 168: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 168 § 3.]

Report to legislature—1988 c 271 § 1: "The department of labor and industries shall conduct a study of the program established by RCW 51.12.102. The department's study shall include the use of benefits under the program and the cost of the program. The department shall report the results of the study to the economic development and labor committee of the senate and the commerce and labor committee of the house of representatives, or the appropriate successor committees, at the start of the 1993 regular legislative session." [1988 c 271 § 4.]

Effective date—Applicability—1988 c 271 §§ 1-4: "Sections 1 through 4 of this act shall take effect July 1, 1988, and shall apply to all claims filed on or after that date or pending a final determination on that date." [1988 c 271 § 5.]