
SENATE BILL 5747

State of Washington

52nd Legislature

1991 Regular Session

By Senators McMullen, Anderson and Talmadge.

Read first time February 19, 1991. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to compromise of industrial insurance liens in
2 actions against third parties; and amending RCW 51.24.060.

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

4 **Sec. 1.** RCW 51.24.060 and 1987 c 442 s 1118 are each amended to
5 read as follows:

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

9 (a) The costs and reasonable attorneys' fees shall be paid
10 proportionately by the injured worker or beneficiary and the department
11 and/or self-insurer;

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

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

4 (i) The department and/or self-insurer shall bear its proportionate
5 share of the costs and reasonable attorneys' fees incurred by the
6 worker or beneficiary to the extent of the benefits paid or payable
7 under this title: PROVIDED, That the department or self-insurer may
8 require court approval of costs and attorneys' fees or may petition a
9 court for determination of the reasonableness of costs and attorneys'
10 fees.

11 (ii) The sum representing the department's and/or self-insurer's
12 proportionate share shall not be subject to subsection (1) (d) and (e)
13 of this section.

14 (d) Any remaining balance shall be paid to the injured worker or
15 beneficiary;

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

22 (f) If the employer or a co-employee are determined under RCW
23 4.22.070 to be at fault, (c) and (e) of this subsection do not apply
24 and benefits shall be paid by the department and/or self-insurer to or
25 on behalf of the worker or beneficiary as though no recovery had been
26 made from a third person.

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

29 (3) ~~((The department or self-insurer has sole discretion to
30 compromise the amount of its lien. In deciding whether or to what~~

1 ~~extent to compromise its lien, the department or self-insurer shall~~
2 ~~consider at least the following:~~

3 ~~(a) The likelihood of collection of the award or settlement as may~~
4 ~~be affected by insurance coverage, solvency, or other factors relating~~
5 ~~to the third person;~~

6 ~~(b) Factual and legal issues of liability as between the injured~~
7 ~~worker or beneficiary and the third person. Such issues include but~~
8 ~~are not limited to possible contributory negligence and novel theories~~
9 ~~of liability; and~~

10 ~~(c) Problems of proof faced in obtaining the award or settlement))~~

11 (a) In the event of a compromise and settlement between the injured
12 worker or beneficiary and the third party, the lien of the department
13 or self-insurer shall be equitably compromised.

14 (b) If the injured worker or beneficiary and the department or
15 self-insurer cannot agree on an equitable compromise of the lien,
16 either party may appeal to the board of industrial insurance appeals
17 for a determination. The board shall consider:

18 (i) The extent to which the injured worker failed to obtain full
19 recovery for his or her damages;

20 (ii) The likelihood of collection of the full settlement amount, as
21 may be affected by insurance coverage, solvency, or other factors
22 relating to the third person;

23 (iii) Factual and legal issues of liability between the parties,
24 including but not limited to possible contributory negligence and novel
25 theories of liability;

26 (iv) The risk associated with the investment in the costs of
27 investigating and prosecuting the claim; and

28 (v) Problems of proof faced in obtaining the settlement.

29 (c) Appeals pursuant to this subsection shall be heard and decided
30 within thirty days after filing.

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

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

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

16 (7) The distribution of any recovery made by award or settlement of
17 the third party action shall be confirmed by department order, served
18 by registered or certified mail, and shall be subject to chapter 51.52
19 RCW. In the event the order of distribution becomes final under
20 chapter 51.52 RCW, the director or the director's designee may file
21 with the clerk of any county within the state a warrant in the amount
22 of the sum representing the unpaid lien plus interest accruing from the
23 date the order became final. The clerk of the county in which the
24 warrant is filed shall immediately designate a superior court cause
25 number for such warrant and the clerk shall cause to be entered in the
26 judgment docket under the superior court cause number assigned to the
27 warrant, the name of such worker or beneficiary mentioned in the
28 warrant, the amount of the unpaid lien plus interest accrued and the
29 date when the warrant was filed. The amount of such warrant as
30 docketed shall become a lien upon the title to and interest in all real

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

14 (8) The director, or the director's designee, may issue to any
15 person, firm, corporation, municipal corporation, political subdivision
16 of the state, public corporation, or agency of the state, a notice and
17 order to withhold and deliver property of any kind if he or she has
18 reason to believe that there is in the possession of such person, firm,
19 corporation, municipal corporation, political subdivision of the state,
20 public corporation, or agency of the state, property which is due,
21 owing, or belonging to any worker or beneficiary upon whom a warrant
22 has been served by the department for payments due to the state fund.
23 The notice and order to withhold and deliver shall be served by the
24 sheriff of the county or by the sheriff's deputy, or by any authorized
25 representatives of the director. Any person, firm, corporation,
26 municipal corporation, political subdivision of the state, public
27 corporation, or agency of the state upon whom service has been made
28 shall answer the notice within twenty days exclusive of the day of
29 service, under oath and in writing, and shall make true answers to the
30 matters inquired of in the notice and order to withhold and deliver.

1 In the event there is in the possession of the party named and served
2 with such notice and order, any property which may be subject to the
3 claim of the department, such property shall be delivered forthwith to
4 the director or the director's authorized representative upon demand.
5 If the party served and named in the notice and order fails to answer
6 the notice and order within the time prescribed in this section, the
7 court may, after the time to answer such order has expired, render
8 judgment by default against the party named in the notice for the full
9 amount claimed by the director in the notice together with costs. In
10 the event that a notice to withhold and deliver is served upon an
11 employer and the property found to be subject thereto is wages, the
12 employer may assert in the answer to all exemptions provided for by
13 chapter 6.27 RCW to which the wage earner may be entitled.