

(1) For the purpose of legislative review of agency rules filed pursuant to this chapter, any new or amendatory rule promulgated after the effective date of this act, shall be accompanied by a statement prepared by the adopting agency which generally describes the rule's purpose and how the rule is to be implemented. Such statement shall contain, but is not limited to, the following:

(a) A title, containing a description of the rule's purpose, the name of the agency, the statutory authority for the rule, and any other information which may be of assistance in identifying the rule or its purpose;

(b) A summary of the rule;

(c) The agency personnel, with their office location and telephone number, who are responsible for the drafting, implementation, and enforcement of the rule;

(d) The names of the proponents and opponents of the rule, if any; and

(e) Agency comments or recommendations, if any, regarding statutory language, implementation, enforcement, and fiscal matters pertaining to the rule.

(2) Upon filing the rule with the code reviser, the adopting agency shall have copies of the statement on file and available for public inspection and shall forward three copies each of the statement to the secretary of the senate and the chief clerk of the house of representatives, who will in turn forward the statement to the majority and minority caucuses and to the appropriate legislative committees.

Passed the Senate May 17, 1977.

Passed the House May 13, 1977.

Approved by the Governor May 26, 1977.

Filed in Office of Secretary of State May 26, 1977.

CHAPTER 85

[Substitute Senate Bill No. 2154]

INDUSTRIAL INSURANCE—THIRD PARTY ACTIONS

AN ACT Relating to industrial insurance; adding new sections to chapter 51.24 RCW; and repealing section 51.24.010, chapter 23, Laws of 1961, section 7, chapter 274, Laws of 1961, section 37, chapter 289, Laws of 1971 ex. sess., section 93, chapter 154, Laws of 1973 1st ex. sess. and RCW 51.24.010.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. There is added to chapter 51.24 RCW a new section to read as follows:

If the injury to a worker is due to the negligence or wrong of a third person not in the same employ, the injured worker or beneficiary may elect to seek damages from the third person.

NEW SECTION. Sec. 2. There is added to chapter 51.24 RCW a new section to read as follows:

The injured worker or beneficiary shall be entitled to the full compensation and benefits provided by this title regardless of any election or recovery made under this chapter.

NEW SECTION. Sec. 3. There is added to chapter 51.24 RCW a new section to read as follows:

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

(2) The injured worker or beneficiary shall be entitled to the remaining balance of any award or settlement recovered by the department or self-insurer after deduction of the following amounts:

(a) The expenses incurred in making the recovery including reasonable costs of legal services; and

(b) The compensation and benefits paid to or on behalf of the injured worker or beneficiary by the department or self-insurer.

(3) Thereafter no payment shall be made to or on behalf of a worker or beneficiary by the department or self-insurer for such injury until the amount of any further compensation or benefits shall equal any such remaining balance. Thereafter, such benefits shall be paid by the department or self-insurer to or on behalf of the worker or beneficiary as though no third party person claim had been made.

NEW SECTION. Sec. 4. There is added to chapter 51.24 RCW a new section to read as follows:

(1) In an action by the injured worker or beneficiary against the third person, any award or settlement shall be distributed as follows:

(a) The costs and reasonable attorneys' fees shall be paid;

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

(c) The department or self-insurer shall be paid the balance of the award, but only to the extent necessary to reimburse the department or self-insurer for compensation or benefits paid;

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

(e) Thereafter no payment shall be made to or on behalf of a worker or beneficiary by the department or self-insurer for such injury until the amount of any further compensation or benefits shall equal any such remaining balance. Thereafter, such benefits shall be paid by the department or self-insurer to or on behalf of the worker or beneficiary as though no third party person claim had been made.

(2) The award or settlement shall be subject to a lien by the department or self-insurer for its share under this section.

NEW SECTION. Sec. 5. There is added to chapter 51.24 RCW a new section to read as follows:

(1) The department or self-insurer may require the injured worker or beneficiary to exercise the right of election under this chapter by serving a written demand by registered mail, certified mail, or personal service on the worker or beneficiary.

(2) Unless an election is made within sixty days of the receipt of the demand, and unless an action is instituted or settled within the time granted by the department or self-insurer, the injured worker or beneficiary is deemed to have assigned the action to the department or self-insurer. The department or self-insurer shall

allow the worker or beneficiary at least ninety days from the election to institute or settle the action.

(3) If an action which has been filed is not diligently prosecuted, the department or self-insurer may petition the court in which the action is pending for an order assigning the cause of action to the department or self-insurer. Upon a sufficient showing of a lack of diligent prosecution the court in its discretion may issue the order.

NEW SECTION. Sec. 6. There is added to chapter 51.24 RCW a new section to read as follows:

(1) If the injured worker or beneficiary elects to seek damages from the third person, notice of the election must be given to the department or self-insurer. The notice shall be by registered mail, certified mail, or personal service. If an action is filed by the injured worker or beneficiary, a copy of the complaint must be sent by registered mail to the department or self-insurer.

(2) A return showing service of the notice on the department or self-insurer shall be filed with the court but shall not be part of the record except as necessary to give notice to the defendant of the lien imposed by section 4(2).

NEW SECTION. Sec. 7. There is added to chapter 51.24 RCW a new section to read as follows:

Any compromise or settlement of the third party cause of action by the injured worker or beneficiary which results in less than the entitlement under this title is void unless made with the written approval of the department or self-insurer.

NEW SECTION. Sec. 8. There is added to chapter 51.24 RCW a new section to read as follows:

The fact that the injured worker or beneficiary is entitled to compensation under this title shall not be pleaded or admissible in evidence in any third party action under this chapter. Any challenge of the right to bring such action shall be made by supplemental pleadings only and shall be decided by the court as a matter of law.

NEW SECTION. Sec. 9. This 1977 amendatory act shall apply only to causes of action which arise on or after its effective date.

NEW SECTION. Sec. 10. Section 51.24.010, chapter 23, Laws of 1961, section 7, chapter 274, Laws of 1961, section 37, chapter 289, Laws of 1971 ex. sess., section 93, chapter 154, Laws of 1973 1st ex. sess. and RCW 51.24.010 are each repealed.

Passed the Senate May 17, 1977.

Passed the House May 16, 1977.

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