

CHAPTER 218

[Engrossed House Bill No. 1386]

INDUSTRIAL INSURANCE—THIRD PARTY CLAIMS

AN ACT Relating to industrial insurance; amending section 51.24.020, chapter 23, Laws of 1961 as last amended by section 31, chapter 350, Laws of 1977 ex. sess. and RCW 51.24.020; amending section 1, chapter 85, Laws of 1977 ex. sess. and RCW 51.24.030; amending section 3, chapter 85, Laws of 1977 ex. sess. as amended by section 1, chapter 211, Laws of 1983 and RCW 51.24.050; amending section 4, chapter 85, Laws of 1977 ex. sess. as amended by section 2, chapter 211, Laws of 1983 and RCW 51.24.060; amending section 5, chapter 85, Laws of 1977 ex. sess. and RCW 51.24.070; amending section 7, chapter 85, Laws of 1977 ex. sess. and RCW 51.24.090; and adding new sections to chapter 51.24 RCW.

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

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

(1) Actions against third persons that are assigned by the claimant to the department, voluntarily or by operation of law in accordance with chapter 51.24 RCW, may be prosecuted by special assistant attorneys general.

(2) 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 promulgate 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 third party actions under subsection (1) of this section.

Sec. 2. Section 51.24.020, chapter 23, Laws of 1961 as last amended by section 31, chapter 350, Laws of 1977 ex. sess. and RCW 51.24.020 are each amended to read as follows:

If injury (~~or death~~) results to a worker from the deliberate intention of his or her employer to produce such injury (~~or death~~), the worker (~~or surviving spouse, child, or dependent~~) or beneficiary of the worker shall have the privilege to take under this title and also have cause of action against the employer as if this title had not been enacted, for any damages in excess of (~~damages over the amount received or receivable~~) compensation and benefits paid or payable under this title.

Sec. 3. Section 1, chapter 85, Laws of 1977 ex. sess. and RCW 51.24.030 are each amended to read as follows:

(1) If (~~the~~) an injury to a worker for which benefits and compensation are provided under this title 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.

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

Sec. 4. Section 3, chapter 85, Laws of 1977 ex. sess. as amended by section 1, chapter 211, Laws of 1983 and RCW 51.24.050 are each amended 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) If an injury to a worker results in the worker's death, the department or self-insurer to which the cause of action has been assigned may petition a court for the appointment of a special personal representative for the limited purpose of maintaining an action under this chapter and chapter 4.20 RCW.

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

(4) Any ~~((award or settlement recovered))~~ recovery made by the department or self-insurer shall be distributed as follows:

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

(b) The injured worker or beneficiary shall be paid twenty-five percent of the balance of the ~~((award or settlement))~~ recovery made, which shall not be subject to subsection ~~((4))~~ (5) of this section: 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 and/or self-insurer shall be paid the compensation and benefits paid to or on behalf of the injured worker or beneficiary by the department and/or self-insurer; and

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

~~((4))~~ (5) Thereafter no payment shall be made to or on behalf of a worker or beneficiary by the department and/or self-insurer for such injury until the amount of any further compensation ~~((or))~~ and benefits shall equal any such remaining balance. Thereafter, such benefits shall be paid by the department and/or self-insurer to or on behalf of the worker or beneficiary as though no ~~((third party person claim))~~ recovery had been made from a third person.

~~((4))~~ (6) In the case of an employer not qualifying as a self-insurer, the department shall make a retroactive adjustment to such employer's experience rating in which the third party claim has been included to reflect

that portion of the award or settlement which is reimbursed for compensation and benefits paid and, if the claim is open at the time of recovery, applied against further compensation or benefits to which the injured worker or beneficiary may be entitled.

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

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

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

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

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

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

Sec. 5. Section 4, chapter 85, Laws of 1977 ex. sess. as amended by section 2, chapter 211, Laws of 1983 and RCW 51.24.060 are each amended to read as follows:

(1) ~~((In an action by the injured worker or beneficiary against the third person))~~ If the injured worker or beneficiary elects to seek damages from the third person, any ~~((award or settlement))~~ recovery made shall be distributed as follows:

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

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

(i) The department and/or self-insurer shall bear its proportionate share of the costs and reasonable attorneys' fees incurred by the ~~((claimant))~~ worker or beneficiary to the extent of the benefits paid or payable under this title: PROVIDED, That the department or self-insurer may require

court approval of costs and attorneys' fees or may petition a court for determination of the reasonableness of costs and attorneys' fees.

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

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

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

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

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

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

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

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

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

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

(7) The distribution of any recovery made by award or settlement of the third party action shall be confirmed by department order, served by registered or certified mail, and shall be subject to chapter 51.52 RCW. In

the event the order of distribution becomes final under chapter 51.52 RCW, the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the sum representing the unpaid lien plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such worker or beneficiary mentioned in the warrant, the amount of the unpaid lien plus interest accrued and the date when the warrant was filed. The amount of such warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the injured worker or beneficiary against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee of five dollars, which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the injured worker or beneficiary within three days of filing with the clerk.

(8) The director, or the director's designee, may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice and order to withhold and deliver property of any kind if he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property which is due, owing, or belonging to any worker or beneficiary upon whom a warrant has been served by the department for payments due to the state fund. The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy, or by any authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's authorized representative upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the

court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount claimed by the director in the notice together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer to all exemptions provided for by chapter 7.33 RCW to which the wage earner may be entitled.

Sec. 6. Section 5, chapter 85, Laws of 1977 ex. sess. and RCW 51.24-.070 are each amended 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. When a beneficiary is a minor child the demand shall be served upon the legal custodian or guardian of such beneficiary.

(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.

(4) If the department or self-insurer has taken an assignment of the third party cause of action under subsection (2) of this section, the injured worker or beneficiary may, at the discretion of the department or self-insurer, exercise a right of reelection and assume the cause of action subject to reimbursement of litigation expenses incurred by the department or self-insurer.

Sec. 7. Section 7, chapter 85, Laws of 1977 ex. sess. and RCW 51.24-.090 are each amended to read as follows:

(1) 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; PROVIDED, That for the purposes of this chapter, "entitlement" means benefits and compensation paid and payable.

(2) If a compromise or settlement is void because of subsection (1) of this section, the department or self-insurer may petition the court in which the action was filed for an order assigning the cause of action to the department or self-insurer. If an action has not been filed, the department or self-insurer may proceed as provided in chapter 7.24 RCW.

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

The department may adopt, amend, and rescind under chapter 34.04 RCW such rules as may be necessary to the administration of this chapter.

NEW SECTION. Sec. 9. There is added to chapter 51.24 RCW a new section to read as follows:

This act applies to all causes of action against third persons in which judgment or settlement of the underlying action has not taken place before the effective date of this act.

Passed the House March 7, 1984.

Passed the Senate March 5, 1984.

Approved by the Governor March 27, 1984.

Filed in Office of Secretary of State March 27, 1984.

CHAPTER 219

[Substitute House Bill No. 977]

DRUNK DRIVING

AN ACT Relating to driving while intoxicated; amending section 47, chapter 165, Laws of 1983 (uncodified); adding a new section to chapter 46.20 RCW; and providing an expiration date.

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

Sec. 1. Section 47, chapter 165, Laws of 1983 (uncodified) is amended to read as follows:

Sections 2, 3 through 12, 14, 16, 18, 22, 24, and 26 of ~~((this act))~~ chapter 165, Laws of 1983 shall take effect on January 1, ~~((+1985))~~ 1986. The remainder of ~~((this act))~~ chapter 165, Laws of 1983 is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1983. The director of licensing may immediately take such steps as are necessary to insure that all sections of ~~((this act))~~ chapter 165, Laws of 1983 are implemented on their respective effective dates.

NEW SECTION. Sec. 2. There is added to chapter 46.20 RCW a new section to read as follows:

(1) Whenever any person is arrested for a violation of RCW 46.61.502 or 46.61.504, the arresting officer shall, at the time of arrest, confiscate the person's Washington state license or permit to drive, if any, and issue a temporary license to replace any confiscated license or permit.

(2) Within twenty-four hours of the arrest, the arresting officer shall transmit any confiscated license or permit to the department with a report indicating the date and location of the arrest.