

1999 SENATE BILL 194

June 15, 1999 – Introduced by Senators GEORGE, BRESKE and BURKE, cosponsored by Representatives CULLEN, COLON, MUSSER, STASKUNAS, KREUSER and KRUG. Referred to Committee on Labor.

1 **AN ACT to renumber and amend** 102.29 (1) of the statutes; **relating to:** the
2 formula for distributing the proceeds of a 3rd-party claim between an employe,
3 or the employe's personal representative or other person entitled bring action,
4 and the employer, the employer's worker's compensation insurer or the
5 department of workforce development.

Analysis by the Legislative Reference Bureau

Under current law, subject to certain exceptions, worker's compensation is the exclusive remedy that an employe who sustains a work-related injury has against the employe's employer and the employer's worker's compensation insurer. Current law, however, provides that the making of a claim for worker's compensation for the injury or death of an employe does not affect the right of the employe, or the employe's personal representative or other person entitled to bring action, to make a claim or bring an action in tort against any party other than the employer or insurer (third party) for damages for the employe's injury or death. Current law also provides that if an employer or insurer has paid or is obligated to pay worker's compensation or if the department of workforce development (DWD) has paid or is obligated to pay an injured employe or a deceased employe's dependents from the uninsured employers fund, the employer, insurer or DWD may make a claim or bring an action in tort against a third party for damages for the employe's injury or death. Currently, the proceeds of a third-party claim are divided as follows:

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1. After deducting the reasonable cost of collection, one-third of the remainder is paid to the injured employe or the employe's personal representative or other person entitled to bring action.

2. Out of the balance remaining, the employer, insurer or uninsured employers fund is reimbursed for all payments that it has made or that it may be obligated to make in the future.

3. Any balance remaining is paid to the injured employe or the employe's personal representative or other person entitled to bring action.

This bill changes the formula for dividing the proceeds of a third-party claim. Under the bill, an employer, an insurer or the uninsured employers fund is reimbursed only for payments that it has made and not for payments that it may be obligated to make in the future. Instead, the bill provides that the employer, insurer or uninsured employers fund shall be liable for any future payments for the employe's injury or death only to the extent that the amount of any future benefits for that injury or death to which the employe, or the employe's personal representative or other person entitled to bring action, becomes entitled exceeds the amount of the balance described in paragraph 3., above.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 102.29 (1) of the statutes is renumbered 102.29 (1) (a) and amended
2 to read:

3 102.29 **(1)** (a) The making of a claim for compensation against an employer or
4 compensation insurer for the injury or death of an employe shall does not affect the
5 right of the employe, the employe's personal representative, or other person entitled
6 to bring action, to make a claim or maintain an action in tort against any other 3rd
7 party for such that injury or death, ~~hereinafter referred to as a 3rd party~~; nor shall
8 does the making of a claim by any such person against a 3rd party for damages by
9 reason of an injury to which ss. 102.03 to 102.64 are applicable, or the adjustment
10 of any such claim, affect the right of the injured employe or the employe's dependents
11 to recover compensation. ~~The An employer or compensation insurer who shall have~~
12 that has paid or is obligated to pay a lawful claim under this chapter shall have the

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1 same right to make a claim or maintain an action in tort against any ~~other~~ 3rd party
2 for such the employee's injury or death. If the department pays or is obligated to pay
3 a claim under s. 102.81 (1), the department shall also have the right to make a claim
4 or maintain an action in tort against any other 3rd party for the employee's injury or
5 death. ~~However, each~~

6 (b) Any party that makes a claim or institutes an action under par. (a) shall give
7 to the other all other interested parties reasonable notice and opportunity to join in
8 the making of such the claim or in the instituting of ~~an~~ the action and to be
9 represented by counsel. If a party that is entitled to receive notice cannot be found,
10 the department shall become the agent of such that party for the giving of a notice
11 as required in this ~~subsection~~ paragraph and the notice, when given to the
12 department, shall include an affidavit setting forth the such facts as show reasonable
13 diligence in attempting to provide notice to that party, including the steps taken to
14 locate such that party. Each party shall have an equal voice in the prosecution of ~~said~~
15 the claim, and any disputes arising shall be passed upon by the court before whom
16 the case is pending, ~~and or~~ if no action is pending, then by a court of record or by the
17 department.

18 (c) If notice is given as provided in this subsection par. (b), the liability of the
19 tort-feasor shall be determined as to all parties having a right to make a claim, and
20 irrespective of whether or not all parties join in prosecuting such the claim, the
21 proceeds of such the claim shall be divided as follows:

22 1. After deducting the reasonable cost of collection, one-third of the remainder
23 shall in any event be paid to the injured employe or the employe's personal
24 representative or other person entitled to bring action.

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1 2. Out of the balance remaining, the employer, the insurance carrier or, if
2 applicable, the uninsured employers fund shall be reimbursed for all payments made
3 by it, ~~or which it may be obligated to make in the future~~, under this chapter, except
4 that ~~it~~ an employer or insurer carrier shall not be reimbursed for any payments of
5 increased compensation made ~~or to be made~~ under s. 102.18 (1) (bp), 102.22, 102.35
6 (3), 102.57 or 102.60. An employer, an insurance carrier or the uninsured employers
7 fund shall not be reimbursed for any payment under this chapter that it may be
8 obligated to make in the future for the employee's injury or death. Instead, the
9 employer, insurer or uninsured employers fund shall be liable for any future
10 payments for the employee's injury or death only to the extent provided in subd. 3.

11 3. Any balance remaining shall be paid to the employe or the employe's personal
12 representative or other person entitled to bring action. If the employe or the
13 employe's personal representative or other person entitled to bring action becomes
14 entitled to receive any benefits under this chapter, other than increased
15 compensation under s. 102.18 (1) (bp), 102.22, 102.35 (3), 102.57 or 102.60, in the
16 future for the employe's injury or death, the employe, personal representative or
17 other person entitled to bring action shall be entitled to receive payment of those
18 future benefits only to the extent that the amount of those future benefits exceeds
19 the amount of the balance paid under this subdivision.

20 (d) If both the employe or the employe's personal representative or other person
21 entitled to bring action, and the employer, compensation insurer or department, join
22 in the pressing of said a 3rd-party claim and are represented by counsel, the
23 attorneys' attorney fees allowed as a part of the costs of collection shall be, unless
24 otherwise agreed upon, divided between ~~such~~ the attorneys for the parties as
25 directed by the court or by the department. A settlement of any 3rd party claim shall

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1 be void unless said the settlement and the distribution of the proceeds ~~thereof~~ of the
2 settlement is approved by the court before whom the action is pending ~~and, or~~ if no
3 action is pending, then by a court of record or by the department.

4 **SECTION 2. Initial applicability.**

5 (1) This act first applies to a distribution of proceeds under section 102.29 (1)
6 of the statutes, as affected by this act, determined by a court, or approved by a court
7 or by the department of workforce development, on the effective date of this
8 subsection.

9 (END)