

**First Regular Session
Sixty-third General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 01-0256.02 Jery Payne

SENATE BILL 01-024

SENATE SPONSORSHIP

May

HOUSE SPONSORSHIP

Larson

Senate Committees

Business, Labor, and Finance

House Committees

A BILL FOR AN ACT

101 **CONCERNING THIRD-PARTY DAMAGES SUBJECT TO SUBROGATION IN**
102 **CLAIMS THAT ARE PAID PURSUANT TO THE "WORKERS'**
103 **COMPENSATION ACT OF COLORADO".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Authorizes an employee who is wrongfully injured, or the dependents of an employee who is wrongfully killed, by a nonemployee to receive compensation through the "Workers' Compensation Act of Colorado" and also to recover damages in excess of such compensation that is subject to subrogation, in contrast to the existing requirement that the claimant elect either workers' compensation benefits or 3rd-party liability. Extends the rights of subrogation and offset to noneconomic

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

damages collected from a 3rd party.

Eliminates the requirement that only the manager of the Colorado compensation insurance authority fund give approval to compromise or prosecute a claim, allowing an agent of such fund to approve such action. Authorizes the party responsible for paying workers' compensation benefits to terminate all future benefits and be reimbursed for all benefits paid without any credit for reasonable attorney fees and costs if a subrogation claim is settled for less than the amount of compensation benefits with the 3rd party without the approval of the responsible party. Removes an employee's potential obligation to pay plaintiff's attorney fees if a subrogation claim is settled for less than the amount of employee's compensation without such approval.

Requires an employee to give notice to the division of workers' compensation and to all parties who may be responsible for paying benefits to the employee if the employee gives notice to a nonemployee that the employee may pursue a claim against such nonemployee. Requires the employee to give notice to all parties who may be responsible for paying benefits to the employee at least 20 days prior to filing a lawsuit against a 3rd party.

Requires the employee to reimburse the party responsible for paying workers' compensation benefits if the employee fails to provide the appropriate notice. Prohibits an obligation that the employee pay plaintiff's attorney fees for the 3rd-party recovery if such attorney fails to give appropriate notice.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 8-41-203, Colorado Revised Statutes, is amended
3 to read:

4 **8-41-203. Negligence of stranger - election of remedies -**
5 **subrogation - actions - compromise.** (1) (a) If any employee entitled to
6 compensation under articles 40 to 47 of this title is injured or killed by the
7 negligence or wrong of another not in the same employ, such injured
8 employee or, in case of death, such employee's dependents ~~before filing~~
9 ~~any claim under this article, shall elect in writing whether to~~ MAY take
10 compensation under said articles ~~or to~~ AND MAY ALSO pursue a remedy
11 against the other person TO RECOVER ANY DAMAGES IN EXCESS OF SUCH

1 COMPENSATION.

2 (b) ~~Such election shall be evidenced in such manner as the director~~
3 ~~may by rule or regulation prescribe. If such injured employee or, in case~~
4 ~~of death, such employee's dependents elect to take compensation under~~
5 ~~said articles,~~ The payment of compensation PURSUANT TO ARTICLES 40 TO
6 47 OF THIS TITLE shall operate as and be an assignment of the cause of
7 action against such other person to the Colorado compensation insurance
8 authority, medical disaster insurance fund, major medical insurance fund,
9 or subsequent injury fund, if compensation is payable from said funds,
10 and otherwise to the person, association, corporation, or insurance carrier
11 liable for the payment of such compensation. Said insurance carrier shall
12 not be entitled to recover any sum in excess of the amount of
13 compensation for which said carrier is liable under said articles to the
14 injured employee, but to that extent said carrier shall be subrogated to the
15 rights of the injured employee against said third party causing the injury.
16 If the injured employee ~~elects to proceed~~ PROCEEDS against such other
17 person, the Colorado compensation insurance authority fund, medical
18 disaster insurance fund, major medical insurance fund, subsequent injury
19 fund, person, association, corporation, or insurance carrier, as the case
20 may be, shall contribute only the deficiency, if any, between the amount
21 of the recovery against such other person actually collected and the
22 compensation provided by said articles in such case.

23 (c) The right of subrogation provided by this section shall apply
24 to and include all compensation and all medical, hospital, dental, funeral,
25 and other benefits and expenses to which the employee or, IF DECEASED,
26 the DECEASED employee's dependents, are entitled under the provisions of
27 said articles, including parts 2 and 3 of article 46 of this title, or for which

1 the employee's employer or insurance carrier is liable or has assumed
2 liability.

3 (d) THE RIGHTS OF SUBROGATION AND OFFSET AGAINST ALL FUTURE
4 BENEFITS PURSUANT TO THIS SECTION SHALL EXTEND TO ALL FUNDS
5 COLLECTED FROM SUCH OTHER PERSON, REGARDLESS OF WHETHER THE
6 DAMAGES ARE ECONOMIC OR NONECONOMIC. THE AMOUNT SUBJECT TO
7 SUCH SUBROGATION AND OFFSET SHALL BE REDUCED BY AN AMOUNT
8 EQUAL TO THE REASONABLE ATTORNEY FEES AND COSTS PAID BY THE
9 INJURED EMPLOYEE IN PURSUIT OF THE RECOVERY AGAINST THE OTHER
10 PERSON AND COLLECTION OF SUCH RECOVERY.

11 (e) Nothing in this section shall be construed as limiting in any
12 way the right of the injured employee to elect to take compensation under
13 articles 40 to 47 of this title and also proceed against the third party
14 causing the injury to recover any damages in excess of the subrogation
15 rights described in this section.

16 (2) Such a cause of action assigned to the Colorado compensation
17 insurance authority may be prosecuted or compromised by it SUCH
18 AUTHORITY. A compromise of any such cause of action by the employee
19 or the DECEASED employee's dependents at an amount less than the
20 compensation provided for by articles 40 to 47 of this title shall be made
21 only with the written approval of ~~the manager~~ AN AUTHORIZED AGENT of
22 the Colorado compensation insurance authority fund, if the deficiency of
23 compensation would be payable from the Colorado compensation
24 insurance authority fund, and otherwise with the written approval of the
25 person, association, corporation, or insurance carrier liable to pay the
26 same. FAILURE TO OBTAIN SUCH APPROVAL SHALL ENTITLE THE PARTY
27 RESPONSIBLE FOR PAYING WORKERS' COMPENSATION BENEFITS TO

1 TERMINATE ALL FUTURE BENEFITS AND BE REIMBURSED FOR ALL BENEFITS
2 PAID FROM THE ENTIRE PROCEEDS RECOVERED WITHOUT ANY CREDIT FOR
3 REASONABLE ATTORNEY FEES AND COSTS AS PROVIDED IN PARAGRAPH (d)
4 OF SUBSECTION (1) OF THIS SECTION. IF SUCH APPROVAL IS NOT OBTAINED
5 THE EMPLOYEE OR DECEASED EMPLOYEE'S DEPENDENTS SHALL NOT BE
6 LIABLE FOR ANY PLAINTIFF'S ATTORNEY FEES FOR THE THIRD-PARTY
7 RECOVERY AND ARE NOT SUBJECT TO ANY ACTION FOR REFUSAL TO PAY
8 SUCH PLAINTIFF'S ATTORNEY FEES RESULTING FROM THE THIRD-PARTY
9 CASE.

10 (3) If an employee is killed by the negligence or wrong of another
11 not in the same employ and the dependents of such employee entitled to
12 compensation under articles 40 to 47 of this title are minors, ~~such election~~
13 ~~to take compensation and the assignment of the cause of action against~~
14 ~~such other person and such notice of election to pursue a remedy against~~
15 ~~such~~ other person shall be made by such minor or shall be made on the
16 minor's behalf by a parent of such minor or by the minor's next friend or
17 duly appointed guardian, as the director of the division of workers'
18 compensation may determine by rule in each case.

19 (4) (a) IF THE EMPLOYEE, OR DECEASED EMPLOYEE'S DEPENDENTS,
20 GIVES NOTICE TO A PERSON NOT IN THE SAME EMPLOY THAT THE EMPLOYEE
21 MAY PURSUE A CLAIM AGAINST SUCH OTHER PERSON, THE EMPLOYEE OR
22 DECEASED EMPLOYEE'S DEPENDENTS SHALL ALSO GIVE NOTICE, WITHIN TEN
23 DAYS, TO THE DIVISION OF WORKERS' COMPENSATION AND TO ALL PARTIES
24 WHO MAY BE RESPONSIBLE FOR PAYING BENEFITS TO THE EMPLOYEE UNDER
25 ARTICLES 40 TO 47 OF THIS TITLE.

26 (b) THE NOTICE REQUIRED BY THIS SUBSECTION (4) SHALL CONTAIN
27 THE FOLLOWING:

1 (I) A DESCRIPTION OF THE CLAIM;

2 (II) THE NAME AND ADDRESS OF ANY AND ALL OTHER PERSONS
3 BELIEVED TO BE NEGLIGENT, AND THE NAME AND ADDRESS OF ANY
4 ATTORNEY REPRESENTING THE EMPLOYEE; AND

5 (III) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE
6 INSURANCE COMPANY OR THIRD-PARTY ADMINISTRATOR, AND THE NAME
7 AND ADDRESS OF ANY ATTORNEY REPRESENTING THE THIRD PARTY.

8 (c) THE EMPLOYEE, OR DECEASED EMPLOYEE'S DEPENDENTS, SHALL
9 GIVE WRITTEN NOTICE TO ALL PARTIES WHO MAY BE RESPONSIBLE FOR
10 PAYING BENEFITS TO THE EMPLOYEE UNDER ARTICLES 40 TO 47 OF THIS
11 TITLE AT LEAST TWENTY DAYS PRIOR TO FILING A LAWSUIT AGAINST SUCH
12 OTHER PERSON. SUCH NOTICE SHALL CONTAIN ALL OF THE INFORMATION
13 SET OUT IN PARAGRAPH (b) OF THIS SUBSECTION (4) AND SHALL BE
14 ACCOMPANIED BY A DRAFT COPY OF THE COMPLAINT.

15 (5) IF THE EMPLOYEE, OR DECEASED EMPLOYEE'S DEPENDENTS,
16 FAILS TO PROVIDE THE NOTICE REQUIRED BY SUBSECTION (4) OF THIS
17 SECTION, THE PARTY RESPONSIBLE FOR PAYING WORKERS' COMPENSATION
18 BENEFITS SHALL BE ENTITLED TO REIMBURSEMENT FROM ALL FUNDS
19 COLLECTED AGAINST THE THIRD PARTY, WITHOUT ANY CREDIT FOR
20 REASONABLE ATTORNEY FEES AS PROVIDED IN PARAGRAPH (d) OF
21 SUBSECTION (1) OF THIS SECTION. IF SUCH NOTICE IS NOT GIVEN PURSUANT
22 TO SUBSECTION (4) OF THIS SECTION, THE EMPLOYEE OR DECEASED
23 EMPLOYEE'S DEPENDENTS SHALL NOT BE LIABLE FOR ANY PLAINTIFF'S
24 ATTORNEY FEES FOR THE THIRD-PARTY RECOVERY AND ARE NOT SUBJECT
25 TO ANY ACTION FOR REFUSAL TO PAY SUCH PLAINTIFF'S ATTORNEY FEES
26 RESULTING FROM THE THIRD-PARTY CASE.

27 **SECTION 2. Effective date.** This act shall take effect July 1,

1 2001.

2 **SECTION 3. Safety clause.** The general assembly hereby finds,
3 determines, and declares that this act is necessary for the immediate
4 preservation of the public peace, health, and safety.