

2022 -- H 7934

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- WORKERS' COMPENSATION --  
PROCEDURE

Introduced By: Representative Jacquelyn M. Baginski

Date Introduced: March 07, 2022

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 28-35-58 of the General Laws in Chapter 28-35 entitled "Workers'  
2 Compensation - Procedure" is hereby amended to read as follows:

3           **28-35-58. Liability of third person for damages.**

4           (a) Where the injury for which compensation is payable under chapters 29 -- 38 of this title  
5 was caused under circumstances creating a legal liability in some person other than the employer  
6 to pay damages in respect of the injury, the employee may take proceedings, both against that  
7 person to recover damages and against any person liable to pay compensation under those chapters  
8 for that compensation, and the employee shall be entitled to receive both damages and  
9 compensation. The employee, in recovering damages either by judgment or settlement from the  
10 person so liable to pay damages, shall reimburse the person by whom the compensation was paid  
11 to the extent of the compensation paid as of the date of the judgment or settlement and the receipt  
12 of those damages by the employee shall not bar future compensation. An insurer shall be entitled  
13 to suspend the payment of compensation benefits payable to the employee when the damages  
14 recovered by judgment or settlement from the person so liable to pay damages exceeds the  
15 compensation paid as of the date of the judgment or settlement. The suspension paid shall be that  
16 number of weeks which are equal to the excess damages paid divided by the employee's weekly  
17 compensation rate; however, during the period of suspension the employee shall be entitled to  
18 receive the benefit of all medical and hospital payments on his or her behalf. If the employee has

1 been paid compensation under those chapters, the person by whom the compensation was paid shall  
2 be entitled to indemnity from the person liable to pay damages, and to the extent of that indemnity  
3 shall be subrogated to the rights of the employee to recover those damages. When money has been  
4 recovered either by judgment or by settlement by an employee from the person liable to pay  
5 damages, by suit or settlement, and the employee is required to reimburse the person by whom the  
6 compensation was paid, the employee or his or her attorney shall be entitled to withhold from the  
7 amount to be reimbursed that proportion of the costs, witness expenses, and other out-of-pocket  
8 expenses and attorney fees which the amount which the employee is required to reimburse the  
9 person by whom compensation was paid bears to the amount recovered from the third party.

10 (b) Any money recovered by judgment, award, or settlement that includes damages for past  
11 or future pain and suffering, loss of consortium, loss of society, loss of wages and/or earning  
12 capacity or other damages not fully compensated by workers' compensation, shall not be  
13 reimbursed. The amount to be reimbursed shall also be reduced by any percentage of the employee's  
14 comparative negligence. Any dispute regarding the appropriate apportionment of the amount to be  
15 reimbursed by the employee shall be heard in the court having jurisdiction of the underlying third-  
16 party claim.

17 ~~(b)~~(c) In any case in which the employee or, in case of death, the administrator of the  
18 employee's estate neglects to exercise the employee's right of action by failing to file a lawsuit  
19 against such third person within two (2) years and eight (8) months after the injury, the self-insured  
20 employer or the employer's insurance carrier may so proceed and shall be subrogated to the rights  
21 of the injured employee or, in case of death, to the rights of the administrator to recover against  
22 such person; provided, that no subrogation action shall commence unless at least twenty-six (26)  
23 weeks prior to the expiration of the two (2) years and eight (8) months the self-insured employer  
24 or the employer's insurance carrier has notified the employee or in the case of death, the  
25 administrator of the employee's estate, in writing by personal service or certified mail, that failure  
26 to commence such action within two (2) years and eight (8) months after the injury will operate as  
27 an assignment of the right of action to the self-insured employer or the employer's insurance carrier.  
28 Upon filing the lawsuit the attorney for the self-insured employer or the employer's insurance  
29 carrier shall notify the employee in writing by personal service or certified mail of the action and  
30 the name of the court where it was filed and the employee may join as a plaintiff in the action within  
31 thirty days after the notification, and, if the employee fails to join, the right of joinder shall abate.  
32 The right of the employee, or in case of death, the administrator of the employee's estate, to be fully  
33 compensated for the damages sustained shall be fully preserved as outlined in subsection (a) of this  
34 section.

1           ~~(e)~~(d) If the self-insured employer or the employer's insurance carrier recovers from these  
2 other personal damages or benefits, after expenses and costs of action have been paid, in excess of  
3 the amount of the lien as defined in this section, then that excess shall be paid to the injured  
4 employee or, in the case of death, to the administrator of the employee's estate for distribution.

5           SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

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1           This act would, for purposes of liability of third persons for damages relating to claims for  
2 workers compensation, provide that reimbursement not be provided for certain damages, and would  
3 reduce any award by any percentage of the employees comparative negligence.

4           This act would take effect upon passage.

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