



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1596

Introduced 2/15/2019, by Sen. Elgie R. Sims, Jr.

SYNOPSIS AS INTRODUCED:

820 ILCS 305/1.2 new	
820 ILCS 305/5	from Ch. 48, par. 138.5
820 ILCS 305/11	from Ch. 48, par. 138.11
820 ILCS 310/1.1 new	
820 ILCS 310/5	from Ch. 48, par. 172.40
820 ILCS 310/11	from Ch. 48, par. 172.46

Amends the Worker's Compensation Act and the Workers' Occupational Diseases Act. Provides that specified Sections limiting recovery do not apply to injuries or death resulting from an occupational disease as to which the recovery of compensation benefits under the Act would be precluded due to the operation of any period of repose or repose provision. Provides that, as to any such injury occupational disease, the employee, the employee's heirs, and any person having the standing under law to bring a civil action at law has the nonwaivable right to bring such an action against any employer or employers. Effective immediately.

LRB101 07912 JLS 52967 b

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Workers' Compensation Act is amended by
5 changing Sections 5 and 11 and by adding Section 1.2 as
6 follows:

7 (820 ILCS 305/1.2 new)

8 Sec. 1.2. Permitted civil actions. Subsection (a) of
9 Section 5 and Section 11 do not apply to any injury or death
10 sustained by an employee as to which the recovery of
11 compensation benefits under this Act would be precluded due to
12 the operation of any period of repose or repose provision. As
13 to any such injury or death, the employee, the employee's
14 heirs, and any person having standing under the law to bring a
15 civil action at law, including an action for wrongful death and
16 an action pursuant to Section 27-6 of the Probate Act of 1975,
17 has the nonwaivable right to bring such an action against any
18 employer or employers.

19 (820 ILCS 305/5) (from Ch. 48, par. 138.5)

20 Sec. 5. Damages; minors; third-party liability.

21 (a) Except as provided in Section 1.2, no ~~no~~ common law or
22 statutory right to recover damages from the employer, his

1 insurer, his broker, any service organization that is wholly
2 owned by the employer, his insurer or his broker and that
3 provides safety service, advice or recommendations for the
4 employer or the agents or employees of any of them for injury
5 or death sustained by any employee while engaged in the line of
6 his duty as such employee, other than the compensation herein
7 provided, is available to any employee who is covered by the
8 provisions of this Act, to any one wholly or partially
9 dependent upon him, the legal representatives of his estate, or
10 any one otherwise entitled to recover damages for such injury.

11 However, in any action now pending or hereafter begun to
12 enforce a common law or statutory right to recover damages for
13 negligently causing the injury or death of any employee it is
14 not necessary to allege in the complaint that either the
15 employee or the employer or both were not governed by the
16 provisions of this Act or of any similar Act in force in this
17 or any other State.

18 Any illegally employed minor or his legal representatives
19 shall, except as hereinafter provided, have the right within 6
20 months after the time of injury or death, or within 6 months
21 after the appointment of a legal representative, whichever
22 shall be later, to file with the Commission a rejection of his
23 right to the benefits under this Act, in which case such
24 illegally employed minor or his legal representatives shall
25 have the right to pursue his or their common law or statutory
26 remedies to recover damages for such injury or death.

1 No payment of compensation under this Act shall be made to
2 an illegally employed minor, or his legal representatives,
3 unless such payment and the waiver of his right to reject the
4 benefits of this Act has first been approved by the Commission
5 or any member thereof, and if such payment and the waiver of
6 his right of rejection has been so approved such payment is a
7 bar to a subsequent rejection of the provisions of this Act.

8 (b) Where the injury or death for which compensation is
9 payable under this Act was caused under circumstances creating
10 a legal liability for damages on the part of some person other
11 than his employer to pay damages, then legal proceedings may be
12 taken against such other person to recover damages
13 notwithstanding such employer's payment of or liability to pay
14 compensation under this Act. In such case, however, if the
15 action against such other person is brought by the injured
16 employee or his personal representative and judgment is
17 obtained and paid, or settlement is made with such other
18 person, either with or without suit, then from the amount
19 received by such employee or personal representative there
20 shall be paid to the employer the amount of compensation paid
21 or to be paid by him to such employee or personal
22 representative including amounts paid or to be paid pursuant to
23 paragraph (a) of Section 8 of this Act.

24 Out of any reimbursement received by the employer pursuant
25 to this Section the employer shall pay his pro rata share of
26 all costs and reasonably necessary expenses in connection with

1 such third-party claim, action or suit and where the services
2 of an attorney at law of the employee or dependents have
3 resulted in or substantially contributed to the procurement by
4 suit, settlement or otherwise of the proceeds out of which the
5 employer is reimbursed, then, in the absence of other
6 agreement, the employer shall pay such attorney 25% of the
7 gross amount of such reimbursement.

8 If the injured employee or his personal representative
9 agrees to receive compensation from the employer or accept from
10 the employer any payment on account of such compensation, or to
11 institute proceedings to recover the same, the employer may
12 have or claim a lien upon any award, judgment or fund out of
13 which such employee might be compensated from such third party.

14 In such actions brought by the employee or his personal
15 representative, he shall forthwith notify his employer by
16 personal service or registered mail, of such fact and of the
17 name of the court in which the suit is brought, filing proof
18 thereof in the action. The employer may, at any time thereafter
19 join in the action upon his motion so that all orders of court
20 after hearing and judgment shall be made for his protection. No
21 release or settlement of claim for damages by reason of such
22 injury or death, and no satisfaction of judgment in such
23 proceedings shall be valid without the written consent of both
24 employer and employee or his personal representative, except in
25 the case of the employers, such consent is not required where
26 the employer has been fully indemnified or protected by Court

1 order.

2 In the event the employee or his personal representative
3 fails to institute a proceeding against such third person at
4 any time prior to 3 months before such action would be barred,
5 the employer may in his own name or in the name of the
6 employee, or his personal representative, commence a
7 proceeding against such other person for the recovery of
8 damages on account of such injury or death to the employee, and
9 out of any amount recovered the employer shall pay over to the
10 injured employee or his personal representatives all sums
11 collected from such other person by judgment or otherwise in
12 excess of the amount of such compensation paid or to be paid
13 under this Act, including amounts paid or to be paid pursuant
14 to paragraph (a) of Section 8 of this Act, and costs,
15 attorney's fees and reasonable expenses as may be incurred by
16 such employer in making such collection or in enforcing such
17 liability.

18 (Source: P.A. 98-633, eff. 6-5-14.)

19 (820 ILCS 305/11) (from Ch. 48, par. 138.11)

20 Sec. 11. Measure of responsibility. Except as provided in
21 Section 1.2, the ~~The~~ compensation herein provided, together
22 with the provisions of this Act, shall be the measure of the
23 responsibility of any employer engaged in any of the
24 enterprises or businesses enumerated in Section 3 of this Act,
25 or of any employer who is not engaged in any such enterprises

1 or businesses, but who has elected to provide and pay
2 compensation for accidental injuries sustained by any employee
3 arising out of and in the course of the employment according to
4 the provisions of this Act, and whose election to continue
5 under this Act, has not been nullified by any action of his
6 employees as provided for in this Act.

7 Accidental injuries incurred while participating in
8 voluntary recreational programs including but not limited to
9 athletic events, parties and picnics do not arise out of and in
10 the course of the employment even though the employer pays some
11 or all of the cost thereof. This exclusion shall not apply in
12 the event that the injured employee was ordered or assigned by
13 his employer to participate in the program.

14 Notwithstanding any other defense, accidental injuries
15 incurred while the employee is engaged in the active commission
16 of and as a proximate result of the active commission of (a) a
17 forcible felony, (b) aggravated driving under the influence of
18 alcohol, other drug or drugs, or intoxicating compound or
19 compounds, or any combination thereof, or (c) reckless homicide
20 and for which the employee was convicted do not arise out of
21 and in the course of employment if the commission of that
22 forcible felony, aggravated driving under the influence, or
23 reckless homicide caused an accident resulting in the death or
24 severe injury of another person. If an employee is acquitted of
25 a forcible felony, aggravated driving under the influence, or
26 reckless homicide that caused an accident resulting in the

1 death or severe injury of another person or if these charges
2 are dismissed, there shall be no presumption that the employee
3 is eligible for benefits under this Act. No employee shall be
4 entitled to additional compensation under Sections 19(k) or
5 19(l) of this Act or attorney's fees under Section 16 of this
6 Act when the employee has been charged with a forcible felony,
7 aggravated driving under the influence, or reckless homicide
8 that caused an accident resulting in the death or severe injury
9 of another person and the employer terminates benefits or
10 refuses to pay benefits to the employee until the termination
11 of any pending criminal proceedings.

12 Accidental injuries incurred while participating as a
13 patient in a drug or alcohol rehabilitation program do not
14 arise out of and in the course of employment even though the
15 employer pays some or all of the costs thereof.

16 Any injury to or disease or death of an employee arising
17 from the administration of a vaccine, including without
18 limitation smallpox vaccine, to prepare for, or as a response
19 to, a threatened or potential bioterrorist incident to the
20 employee as part of a voluntary inoculation program in
21 connection with the person's employment or in connection with
22 any governmental program or recommendation for the inoculation
23 of workers in the employee's occupation, geographical area, or
24 other category that includes the employee is deemed to arise
25 out of and in the course of the employment for all purposes
26 under this Act. This paragraph added by this amendatory Act of

1 the 93rd General Assembly is declarative of existing law and is
2 not a new enactment.

3 No compensation shall be payable if (i) the employee's
4 intoxication is the proximate cause of the employee's
5 accidental injury or (ii) at the time the employee incurred the
6 accidental injury, the employee was so intoxicated that the
7 intoxication constituted a departure from the employment.
8 Admissible evidence of the concentration of (1) alcohol, (2)
9 cannabis as defined in the Cannabis Control Act, (3) a
10 controlled substance listed in the Illinois Controlled
11 Substances Act, or (4) an intoxicating compound listed in the
12 Use of Intoxicating Compounds Act in the employee's blood,
13 breath, or urine at the time the employee incurred the
14 accidental injury shall be considered in any hearing under this
15 Act to determine whether the employee was intoxicated at the
16 time the employee incurred the accidental injuries. If at the
17 time of the accidental injuries, there was 0.08% or more by
18 weight of alcohol in the employee's blood, breath, or urine or
19 if there is any evidence of impairment due to the unlawful or
20 unauthorized use of (1) cannabis as defined in the Cannabis
21 Control Act, (2) a controlled substance listed in the Illinois
22 Controlled Substances Act, or (3) an intoxicating compound
23 listed in the Use of Intoxicating Compounds Act or if the
24 employee refuses to submit to testing of blood, breath, or
25 urine, then there shall be a rebuttable presumption that the
26 employee was intoxicated and that the intoxication was the

1 proximate cause of the employee's injury. The employee may
2 overcome the rebuttable presumption by the preponderance of the
3 admissible evidence that the intoxication was not the sole
4 proximate cause or proximate cause of the accidental injuries.
5 Percentage by weight of alcohol in the blood shall be based on
6 grams of alcohol per 100 milliliters of blood. Percentage by
7 weight of alcohol in the breath shall be based upon grams of
8 alcohol per 210 liters of breath. Any testing that has not been
9 performed by an accredited or certified testing laboratory
10 shall not be admissible in any hearing under this Act to
11 determine whether the employee was intoxicated at the time the
12 employee incurred the accidental injury.

13 All sample collection and testing for alcohol and drugs
14 under this Section shall be performed in accordance with rules
15 to be adopted by the Commission. These rules shall ensure:

16 (1) compliance with the National Labor Relations Act
17 regarding collective bargaining agreements or regulations
18 promulgated by the United States Department of
19 Transportation;

20 (2) that samples are collected and tested in
21 conformance with national and State legal and regulatory
22 standards for the privacy of the individual being tested,
23 and in a manner reasonably calculated to prevent
24 substitutions or interference with the collection or
25 testing of reliable sample;

26 (3) that split testing procedures are utilized;

1 (4) that sample collection is documented, and the
2 documentation procedures include:

3 (A) the labeling of samples in a manner so as to
4 reasonably preclude the probability of erroneous
5 identification of test result; and

6 (B) an opportunity for the employee to provide
7 notification of any information which he or she
8 considers relevant to the test, including
9 identification of currently or recently used
10 prescription or nonprescription drugs and other
11 relevant medical information;

12 (5) that sample collection, storage, and
13 transportation to the place of testing is performed in a
14 manner so as to reasonably preclude the probability of
15 sample contamination or adulteration; and

16 (6) that chemical analyses of blood, urine, breath, or
17 other bodily substance are performed according to
18 nationally scientifically accepted analytical methods and
19 procedures.

20 The changes to this Section made by Public Act 97-18 apply
21 only to accidental injuries that occur on or after September 1,
22 2011.

23 (Source: P.A. 97-18, eff. 6-28-11; 97-276, eff. 8-8-11; 97-813,
24 eff. 7-13-12.)

25 Section 10. The Workers' Occupational Diseases Act is

1 amended by changing Sections 5 and 11 and by adding Section 1.1
2 as follows:

3 (820 ILCS 310/1.1 new)

4 Sec. 1.1. Permitted civil actions. Subsection (a) of
5 Section 5 and Section 11 do not apply to any injury or death
6 resulting from an occupational disease as to which the recovery
7 of compensation benefits under this Act would be precluded due
8 to the operation of any period of repose or repose provision.
9 As to any such occupational disease, the employee, the
10 employee's heirs, and any person having standing under the law
11 to bring a civil action at law, including an action for
12 wrongful death and an action pursuant to Section 27-6 of the
13 Probate Act of 1975, has the nonwaivable right to bring such an
14 action against any employer or employers.

15 (820 ILCS 310/5) (from Ch. 48, par. 172.40)

16 (Text of Section WITHOUT the changes made by P.A. 89-7,
17 which has been held unconstitutional)

18 Sec. 5. Liability inclusive; third-party liability.

19 (a) Except as provided in Section 1.1, there ~~There~~ is no
20 common law or statutory right to recover compensation or
21 damages from the employer, his insurer, his broker, any service
22 organization retained by the employer, his insurer or his
23 broker to provide safety service, advice or recommendations for
24 the employer or the agents or employees of any of them for or

1 on account of any injury to health, disease, or death
2 therefrom, other than for the compensation herein provided or
3 for damages as provided in Section 3 of this Act. This Section
4 shall not affect any right to compensation under the "Workers'
5 Compensation Act".

6 No compensation is payable under this Act for any condition
7 of physical or mental ill-being, disability, disablement, or
8 death for which compensation is recoverable on account of
9 accidental injury under the "Workers' Compensation Act".

10 (b) Where the disablement or death for which compensation
11 is payable under this Act was caused under circumstances
12 creating a legal liability for damages on the part of some
13 person other than his employer to pay damages, then legal
14 proceedings may be taken against such other person to recover
15 damages notwithstanding such employer's payment of or
16 liability to pay compensation under this Act. In such case,
17 however, if the action against such other person is brought by
18 the employee with a disability or his personal representative
19 and judgment is obtained and paid or settlement is made with
20 such other person, either with or without suit, then from the
21 amount received by such employee or personal representative
22 there shall be paid to the employer the amount of compensation
23 paid or to be paid by him to such employee or personal
24 representative, including amounts paid or to be paid pursuant
25 to paragraph (a) of Section 8 of this Act.

26 Out of any reimbursement received by the employer, pursuant

1 to this Section the employer shall pay his pro rata share of
2 all costs and reasonably necessary expenses in connection with
3 such third party claim, action or suit, and where the services
4 of an attorney at law of the employee or dependents have
5 resulted in or substantially contributed to the procurement by
6 suit, settlement or otherwise of the proceeds out of which the
7 employer is reimbursed, then, in the absence of other
8 agreement, the employer shall pay such attorney 25% of the
9 gross amount of such reimbursement.

10 If the employee with a disability or his personal
11 representative agrees to receive compensation from the
12 employer or accept from the employer any payment on account of
13 such compensation, or to institute proceedings to recover the
14 same, the employer may have or claim a lien upon any award,
15 judgment or fund out of which such employee might be
16 compensated from such third party.

17 In such actions brought by the employee or his personal
18 representative, he shall forthwith notify his employer by
19 personal service or registered mail, of such fact and of the
20 name of the court in which the suit is brought, filing proof
21 thereof in the action. The employer may, at any time thereafter
22 join in the action upon his motion so that all orders of court
23 after hearing and judgment shall be made for his protection. No
24 release or settlement of claim for damages by reason of such
25 disability or death, and no satisfaction of judgment in such
26 proceedings, are valid without the written consent of both

1 employer and employee or his personal representative, except in
2 the case of the employers, such consent is not required where
3 the employer has been fully indemnified or protected by court
4 order.

5 In the event the employee or his personal representative
6 fails to institute a proceeding against such third person at
7 any time prior to 3 months before such action would be barred
8 at law the employer may in his own name, or in the name of the
9 employee or his personal representative, commence a proceeding
10 against such other person for the recovery of damages on
11 account of such disability or death to the employee, and out of
12 any amount recovered the employer shall pay over to the injured
13 employee or his personal representative all sums collected from
14 such other person by judgment or otherwise in excess of the
15 amount of such compensation paid or to be paid under this Act,
16 including amounts paid or to be paid pursuant to paragraph (a)
17 of Section 8 of this Act, and costs, attorney's fees and
18 reasonable expenses as may be incurred by such employer in
19 making such collection or in enforcing such liability.

20 (Source: P.A. 99-143, eff. 7-27-15.)

21 (820 ILCS 310/11) (from Ch. 48, par. 172.46)

22 Sec. 11. Measure of liability. Except as provided in
23 Section 1.1, the ~~The~~ compensation herein provided for shall be
24 the full, complete and only measure of the liability of the
25 employer bound by election under this Act and such employer's

1 liability for compensation and medical benefits under this Act
2 shall be exclusive and in place of any and all other civil
3 liability whatsoever, at common law or otherwise, to any
4 employee or his legal representative on account of damage,
5 disability or death caused or contributed to by any disease
6 contracted or sustained in the course of the employment.

7 (Source: Laws 1951, p. 1095.)

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.