

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 Section 5 as follows:

6 (820 ILCS 305/5) (from Ch. 48, par. 138.5)

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

8 (a) Except as provided in Section 1.2, no common law or  
9 statutory right to recover damages from the employer, his  
10 insurer, his broker, any service organization that is wholly  
11 owned by the employer, his insurer or his broker and that  
12 provides safety service, advice or recommendations for the  
13 employer or the agents or employees of any of them for injury  
14 or death sustained by any employee while engaged in the line of  
15 his duty as such employee, other than the compensation herein  
16 provided, is available to any employee who is covered by the  
17 provisions of this Act, to any one wholly or partially  
18 dependent upon him, the legal representatives of his estate,  
19 or any one otherwise entitled to recover damages for such  
20 injury.

21 However, in any action now pending or hereafter begun to  
22 enforce a common law or statutory right to recover damages for  
23 negligently causing the injury or death of any employee it is

1 not necessary to allege in the complaint that either the  
2 employee or the employer or both were not governed by the  
3 provisions of this Act or of any similar Act in force in this  
4 or any other State.

5 Moreover, nothing in this Act limits, prevents, or  
6 preempts a recovery by an employee under the Biometric  
7 Information Privacy Act.

8 Any illegally employed minor or his legal representatives  
9 shall, except as hereinafter provided, have the right within 6  
10 months after the time of injury or death, or within 6 months  
11 after the appointment of a legal representative, whichever  
12 shall be later, to file with the Commission a rejection of his  
13 right to the benefits under this Act, in which case such  
14 illegally employed minor or his legal representatives shall  
15 have the right to pursue his or their common law or statutory  
16 remedies to recover damages for such injury or death.

17 No payment of compensation under this Act shall be made to  
18 an illegally employed minor, or his legal representatives,  
19 unless such payment and the waiver of his right to reject the  
20 benefits of this Act has first been approved by the Commission  
21 or any member thereof, and if such payment and the waiver of  
22 his right of rejection has been so approved such payment is a  
23 bar to a subsequent rejection of the provisions of this Act.

24 (b) Where the injury or death for which compensation is  
25 payable under this Act was caused under circumstances creating  
26 a legal liability for damages on the part of some person other

1 than his employer to pay damages, then legal proceedings may  
2 be taken against such other person to recover damages  
3 notwithstanding such employer's payment of or liability to pay  
4 compensation under this Act. In such case, however, if the  
5 action against such other person is brought by the injured  
6 employee or his personal representative and judgment is  
7 obtained and paid, or settlement is made with such other  
8 person, either with or without suit, then from the amount  
9 received by such employee or personal representative there  
10 shall be paid to the employer the amount of compensation paid  
11 or to be paid by him to such employee or personal  
12 representative including amounts paid or to be paid pursuant  
13 to paragraph (a) of Section 8 of this Act.

14 Out of any reimbursement received by the employer pursuant  
15 to this Section the employer shall pay his pro rata share of  
16 all costs and reasonably necessary expenses in connection with  
17 such third-party claim, action or suit and where the services  
18 of an attorney at law of the employee or dependents have  
19 resulted in or substantially contributed to the procurement by  
20 suit, settlement or otherwise of the proceeds out of which the  
21 employer is reimbursed, then, in the absence of other  
22 agreement, the employer shall pay such attorney 25% of the  
23 gross amount of such reimbursement.

24 If the injured employee or his personal representative  
25 agrees to receive compensation from the employer or accept  
26 from the employer any payment on account of such compensation,

1 or to institute proceedings to recover the same, the employer  
2 may have or claim a lien upon any award, judgment or fund out  
3 of which such employee might be compensated from such third  
4 party.

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

19 In the event the employee or his personal representative  
20 fails to institute a proceeding against such third person at  
21 any time prior to 3 months before such action would be barred,  
22 the employer may in his own name or in the name of the  
23 employee, or his personal representative, commence a  
24 proceeding against such other person for the recovery of  
25 damages on account of such injury or death to the employee, and  
26 out of any amount recovered the employer shall pay over to the

1 injured employee or his personal representatives all sums  
2 collected from such other person by judgment or otherwise in  
3 excess of the amount of such compensation paid or to be paid  
4 under this Act, including amounts paid or to be paid pursuant  
5 to paragraph (a) of Section 8 of this Act, and costs,  
6 attorney's fees and reasonable expenses as may be incurred by  
7 such employer in making such collection or in enforcing such  
8 liability.

9 (Source: P.A. 101-6, eff. 5-17-19.)