



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB2409

by Rep. Jay Hoffman

SYNOPSIS AS INTRODUCED:

820 ILCS 305/5

from Ch. 48, par. 138.5

Amends the Workers' Compensation Act. Provides that there is no right to recover damages for injury or death, other than the compensation provided under the Act, from a service organization that is wholly owned by the employer or the employer's insurer or broker and that provides safety service, advice, or recommendations (rather than from the a service organization retained by the employer or the employer's insurer or broker to provide safety service, advice, or recommendations). Effective immediately.

LRB098 08211 JLS 38309 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 Section 5 as follows:

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

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

9 Sec. 5. (a) No common law or statutory right to recover
10 damages from the employer, his insurer, his broker, any service
11 organization that is wholly owned ~~retained~~ by the employer, his
12 insurer or his broker and that provides ~~to provide~~ safety
13 service, advice or recommendations for the employer or the
14 agents or employees of any of them for injury or death
15 sustained by any employee while engaged in the line of his duty
16 as such employee, other than the compensation herein provided,
17 is available to any employee who is covered by the provisions
18 of this Act, to any one wholly or partially dependent upon him,
19 the legal representatives of his estate, or any one otherwise
20 entitled to recover damages for such 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 Any illegally employed minor or his legal representatives
6 shall, except as hereinafter provided, have the right within 6
7 months after the time of injury or death, or within 6 months
8 after the appointment of a legal representative, whichever
9 shall be later, to file with the Commission a rejection of his
10 right to the benefits under this Act, in which case such
11 illegally employed minor or his legal representatives shall
12 have the right to pursue his or their common law or statutory
13 remedies to recover damages for such injury or death.

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

21 (b) Where the injury or death for which compensation is
22 payable under this Act was caused under circumstances creating
23 a legal liability for damages on the part of some person other
24 than his employer to pay damages, then legal proceedings may be
25 taken against such other person to recover damages
26 notwithstanding such employer's payment of or liability to pay

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

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

21 If the injured employee or his personal representative
22 agrees to receive compensation from the employer or accept from
23 the employer any payment on account of such compensation, or to
24 institute proceedings to recover the same, the employer may
25 have or claim a lien upon any award, judgment or fund out of
26 which such employee might be compensated from such third party.

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

15 In the event the employee or his personal representative
16 fails to institute a proceeding against such third person at
17 any time prior to 3 months before such action would be barred,
18 the employer may in his own name or in the name of the
19 employee, or his personal representative, commence a
20 proceeding against such other person for the recovery of
21 damages on account of such injury or death to the employee, and
22 out of any amount recovered the employer shall pay over to the
23 injured employee or his personal representatives all sums
24 collected from such other person by judgment or otherwise in
25 excess of the amount of such compensation paid or to be paid
26 under this Act, including amounts paid or to be paid pursuant

1 to paragraph (a) of Section 8 of this Act, and costs,
2 attorney's fees and reasonable expenses as may be incurred by
3 such employer in making such collection or in enforcing such
4 liability.

5 (Source: P.A. 79-79.)

6 Section 99. Effective date. This Act takes effect upon
7 becoming law.