

1 AN ACT concerning workers' occupational diseases.

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

4 Section 5. The Workers' Occupational Diseases Act is
5 amended by changing Section 5 as follows:

6 (820 ILCS 310/5) (from Ch. 48, par. 172.40)

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

9 Sec. 5. (a) There is no common law or statutory right to
10 recover compensation or damages from the employer, his
11 insurer, his broker, any service organization retained by the
12 employer, his insurer or his broker to provide safety
13 service, advice or recommendations for the employer or the
14 agents or employees of any of them for or on account of any
15 injury to health, disease, or death therefrom, other than for
16 the compensation herein provided or for damages as provided
17 in Section 3 of this Act. This Section shall not affect any
18 right to compensation under the "Workers' Compensation Act".

19 No compensation is payable under this Act for any
20 condition of physical or mental ill-being, disability,
21 disablement, or death for which compensation is recoverable
22 on account of accidental injury under the "Workers'
23 Compensation Act".

24 (b) Where the disablement or death for which
25 compensation is payable under this Act was caused under
26 circumstances creating a legal liability for damages on the
27 part of some person other than his employer to pay damages,
28 then legal proceedings may be taken against such other person
29 to recover damages notwithstanding such employer's payment of
30 or liability to pay compensation under this Act. In such
31 case, however, if the action against such other person is

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

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

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

27 In such actions brought by the employee or his personal
28 representative, he shall forthwith notify his employer by
29 personal service or registered mail, of such fact and of the
30 name of the court in which the suit is brought, filing proof
31 thereof in the action. The employer may, at any time
32 thereafter join in the action upon his motion so that all
33 orders of court after hearing and judgment shall be made for
34 his protection. No release or settlement of claim for damages

1 by reason of such disability or death, and no satisfaction of
2 judgment in such proceedings, are valid without the written
3 consent of both employer and employee or his personal
4 representative, except in the case of the employers, such
5 consent is not required where the employer has been fully
6 indemnified or protected by court order.

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

23 The employee, employer, and carrier have a duty to
24 cooperate with each other in investigating and prosecuting
25 claims and potential claims against third-party tortfeasors
26 by producing nonprivileged documents and allowing inspection
27 of premises, but only to the extent necessary for that
28 purpose. The documents and the results of the inspections are
29 confidential and exempt from the provisions of the Freedom of
30 Information Act, and may not be used or disclosed for any
31 other purpose.

32 (Source: P.A. 81-992.)