

SENATE BILL NO. 258

INTRODUCED BY HARP
BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

IN THE SENATE

JANUARY 26, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 10, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
	PRINTING REPORT.
FEBRUARY 11, 1993	SECOND READING, DO PASS.
FEBRUARY 12, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 49; NOES, 1.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO SELECT COMMITTEE ON WORKERS' COMPENSATION.
	FIRST READING.
MARCH 11, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 27, 1993	SECOND READING, CONCURRED IN.
MARCH 30, 1993	THIRD READING, CONCURRED IN. AYES, 97; NOES, 2.
MARCH 31, 1993	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 5, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 6, 1993	THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 258
2 INTRODUCED BY HARP
3 BY REQUEST OF THE SENATE JUDICIARY COMMITTEE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT A
6 WORKERS' COMPENSATION INSURER IS ENTITLED TO SUBROGATION
7 UNLESS THE INJURED EMPLOYEE IS ABLE TO DEMONSTRATE DAMAGES
8 IN EXCESS OF THE WORKERS' COMPENSATION BENEFITS AND THE
9 THIRD-PARTY RECOVERY COMBINED; AND AMENDING SECTION
10 39-71-414, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **Section 1.** Section 39-71-414, MCA, is amended to read:

14 "39-71-414. Subrogation. (1) If an action is prosecuted
15 as provided for in 39-71-412 or 39-71-413 and except as
16 otherwise provided in this section, the insurer is entitled
17 to subrogation for all compensation and benefits paid or to
18 be paid under the Workers' Compensation Act. The insurer's
19 right of subrogation is a first lien on the claim, judgment,
20 or recovery.

21 (2) (a) If the injured employee intends to institute
22 the third-party third-party action, he the employee shall
23 give the insurer reasonable notice of his the intention to
24 institute the action.

25 (b) The injured employee may request that the insurer

1 pay a proportionate share of the reasonable cost of the
2 action, including attorneys' attorney fees.

3 (c) The insurer may elect not to participate in the
4 cost of the action. If this election is made, the insurer
5 waives 50% of its subrogation rights granted by this
6 section.

7 (d) If the injured employee or the employee's personal
8 representative institutes the action, the employee is
9 entitled to at least one-third of the amount recovered by
10 judgment or settlement less a proportionate share of
11 reasonable costs, including attorneys' attorney fees, if the
12 amount of recovery is insufficient to provide the employee
13 with that amount after payment of subrogation.

14 (3) If an injured employee refuses or fails to
15 institute the third-party third-party action within 1 year
16 from the date of injury, the insurer may institute the
17 action in the name of the employee and for the employee's
18 benefit or that of the employee's personal representative.
19 If the insurer institutes the action, it shall pay to the
20 employee any amount received by judgment or settlement which
21 that is in excess of the amounts paid or to be paid under
22 the Workers' Compensation Act after the insurer's reasonable
23 costs, including attorneys' attorney fees for prosecuting
24 the action, have been deducted from the recovery.

25 (4) An insurer may enter into compromise agreements in

1 settlement of subrogation rights.

2 (5) Regardless of whether the amount of compensation
3 and other benefits payable under the Workers' Compensation
4 Act have been fully determined, the insurer and the
5 claimant's heirs or personal representative may stipulate
6 the proportion of the third-party settlement to be allocated
7 under subrogation. Upon review and approval by the
8 department, the agreement constitutes a compromise
9 settlement of the issue of subrogation and may not be
10 reopened by the department.

11 (6) (a) The insurer is entitled to full subrogation
12 rights under this section, even-though unless the claimant
13 is able to demonstrate damages in excess of the workers'
14 compensation benefits and the third-party recovery combined.
15 ~~The--insurer--may-subrogate-against-the-entire-settlement-or~~
16 ~~award-of-a-third-party-claim-brought-by-the-claimant-or--his~~
17 ~~personal-representative,-without-regard-to-the-nature-of-the~~
18 ~~damages-~~

19 (b) If no a survival action exists does not exist and
20 the parties reach a settlement of a wrongful death claim
21 without apportionment of damages by a court or jury, the
22 insurer may subrogate against the entire settlement amount,
23 without regard to the parties' apportionment of the damages,
24 unless the insurer is a party to the settlement agreement.

25 (7) Regardless of whether the amount of compensation

1 and other benefits payable have been fully determined, the
2 insurer and the claimant may stipulate the proportion of the
3 third-party settlement to be allocated under subrogation.
4 Upon review and approval by the department, the agreement
5 constitutes a compromise settlement of the issue of
6 subrogation and may not be reopened by the department."

-End-

APPROVED BY COMMITTEE
ON JUDICIARYSenate BILL NO. 258INTRODUCED BY HARP
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(d) If the injured employee or the employee's personal representative institutes the action, the employee is entitled to at least one-third of the amount recovered by judgment or settlement less a proportionate share of reasonable costs, including attorneys' attorney fees, if the amount of recovery is insufficient to provide the employee with that amount after payment of subrogation.

(3) If an injured employee refuses or fails to institute the third-party third-party action within 1 year from the date of injury, the insurer may institute the action in the name of the employee and for the employee's benefit or that of the employee's personal representative. If the insurer institutes the action, it shall pay to the employee any amount received by judgment or settlement which that is in excess of the amounts paid or to be paid under the Workers' Compensation Act after the insurer's reasonable costs, including attorneys' attorney fees for prosecuting the action, have been deducted from the recovery.

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10 reopened by the department.

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12 rights under this section, ~~even-though~~ unless the claimant
13 is able to demonstrate damages in excess of the workers'
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(3) If an injured employee refuses or fails to institute the third-party third-party action within 1 year from the date of injury, the insurer may institute the action in the name of the employee and for the employee's benefit or that of the employee's personal representative. If the insurer institutes the action, it shall pay to the employee any amount received by judgment or settlement which that is in excess of the amounts paid or to be paid under the Workers' Compensation Act after the insurer's reasonable costs, including attorneys' attorney fees for prosecuting the action, have been deducted from the recovery.

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-End-

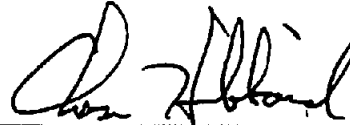
HOUSE SELECT COMMITTEE REPORT

March 10, 1993

Page 1 of 1

Mr. Speaker: We, the select committee on Workers' Compensation report that Senate Bill 258 (third reading copy -- blue) be concurred in as amended .

Signed: _____



Chase Hibbard , Chair

And, that such amendments read:

Carried by: Rep. Ewer

1. Page 3, line 18.

Following: "~~damages.~~"

Insert: "If the insurer is entitled to subrogation under this section, the insurer may subrogate against the entire settlement or award of a third-party claim brought by the claimant or the claimant's personal representative without regard to the nature of the damages."

-END-

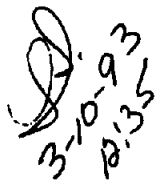
HOUSE

SB 258

541225SC.Hpf

Committee Vote:

Yes 6; No 0.



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18 ~~damages.~~ IF THE INSURER IS ENTITLED TO SUBROGATION UNDER
19 THIS SECTION, THE INSURER MAY SUBROGATE AGAINST THE ENTIRE
20 SETTLEMENT OR AWARD OF A THIRD-PARTY CLAIM BROUGHT BY THE
21 CLAIMANT OR THE CLAIMANT'S PERSONAL REPRESENTATIVE WITHOUT
22 REGARD TO THE NATURE OF THE DAMAGES.

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