

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 1906

By: Coffee

AS INTRODUCED

An Act relating to workers' compensation; amending 85 O.S. 2001, Section 44, as amended by Section 25, Chapter 1, 1st Extraordinary Session, O.S.L. 2005 (85 O.S. Supp. 2005, Section 44), which relates to claims against third persons; clarifying references; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 85 O.S. 2001, Section 44, as amended by Section 25, Chapter 1, 1st Extraordinary Session, O.S.L. 2005 (85 O.S. Supp. 2005, Section 44), is amended to read as follows:

Section 44. (a) If a worker entitled to compensation under the Workers' Compensation Act is injured or killed by the negligence or wrong of another not in the same employ, such injured worker shall, before any suit or claim under the Workers' Compensation Act, elect whether to take compensation under the Workers' Compensation Act, or to pursue ~~his~~ a remedy against such other. Such election shall be evidenced in such manner as the Administrator may by rule or regulation prescribe. If ~~he~~ the employee elects to take compensation under the Workers' Compensation Act, the cause of action against such other shall be assigned to the insurance carrier liable for the payment of such compensation, and if ~~he~~ the employee elects to proceed against such other person or insurance carrier, as the case may be, the employer's insurance carrier shall contribute only the deficiency, if any, between the amount of the recovery against such other person actually collected, and the compensation provided or estimated by the Workers' Compensation Act for such

case. The compromise of any such cause of action by the worker at any amount less than the compensation provided for by the Workers' Compensation Act shall be made only with the written approval of the Court. Whenever recovery against such other person is effected without compromise settlement by the employee or ~~his~~ the employee's representatives, the employer or insurance company having paid compensation under the Workers' Compensation Act shall be entitled to reimbursement as hereinafter set forth and shall pay from its share of said reimbursement a proportionate share of the expenses, including attorneys fees, incurred in effecting said recovery to be determined by the ratio that the amount of compensation paid by the employer bears to the amount of the recovery effected by the employee. After the expenses and attorneys fees have been paid, the balance of the recovery shall be apportioned between the employer or insurance company having paid the compensation and the employee or ~~his~~ the employee's representatives in the same ratio that the amount of compensation paid by the employer bears to the total amount recovered; provided, however, the balance of the recovery may be divided between the employer or insurance company having paid compensation and the employee or ~~his~~ the employee's representatives as they may agree.

In the event that recovery is effected by compromise settlement, then in that event the expenses, attorneys fees and the balance of the recovery may be divided between the employer or insurance company having paid compensation and the employee or ~~his~~ the employee's representatives as they may agree. Provided, that in the event they are unable to agree, then the same shall be apportioned by the district court having jurisdiction of the employee's action against such other person, in such manner as is just and reasonable.

(b) Notwithstanding subsection (d) of this section, the employer or ~~his~~ the employer's insurance carrier shall not have the right of subrogation to recover money paid by the employer or ~~his~~

the employer's insurance carrier for death claims or death benefits under the Workers' Compensation Act from third persons, with all common law rights against other than the employer and ~~his~~ the employer's employees preserved and to be in those persons who would have had such rights had there been no death claim or death benefits under the Workers' Compensation Act.

(c) The employer or ~~his~~ the employer's insurance carrier shall have the right of subrogation to recover money paid by the employer or ~~his~~ the employer's insurance carrier for the expenses of the last illness or accident under the Workers' Compensation Act from third persons, with all common law rights against other than the employer and ~~his~~ the employer's employees preserved and to be in those persons who would have had such rights had there been no benefits under the Workers' Compensation Act.

(d) An employer shall have a cause of action against a third party whose wrongful or negligent conduct causes the death of an employee entitled to compensation under this title to recover any money paid for death benefits on behalf of the employee. Nothing contained in this section shall allow an employer or insurance carrier for an employer to seek an interest in either the death benefits received by the employee or the employee's beneficiary or in a life insurance policy procured by the employee.

SECTION 2. This act shall become effective November 1, 2006.

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