

CHAPTER 25

LABOR AND INDUSTRY

HOUSE BILL 04-1068

BY REPRESENTATIVE(S) Marshall, Borodkin, Boyd, Carroll, Coleman, Frangas, Jahn, Madden, McGihon, Merrifield, Miller, Paccione, Salazar, Tochtrop, and Williams S.;
also SENATOR(S) Veiga.

AN ACT

CONCERNING ACTIONS FOR DAMAGES ON BEHALF OF AN EMPLOYEE FOR INJURIES THAT ARISE FROM THE NEGLIGENT CONDUCT OF A STRANGER.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 8-41-203 (4), Colorado Revised Statutes, is amended to read:

8-41-203. Negligence of stranger - remedies - subrogation - actions - compromise. (4) (a) (I) If the employee or, if the employee is deceased, the employee's dependents ~~give notice to~~ MAKE A DEMAND UPON OR A REQUEST OF A PERSON OR ENTITY NOT IN THE SAME EMPLOY ~~that the employee or dependents may pursue a claim against such other person~~ AS THE EMPLOYEE TO SEEK RECOVERY FOR DAMAGES ARISING FROM ACTIONS OF SUCH OTHER PERSON OR ENTITY, ~~the employee or dependents~~ shall also give written notice, within ten days, to the division of workers' compensation and to all parties who may be responsible for paying benefits to the employee or dependents under articles 40 to 47 of this title.

(II) IF THE PARTY RESPONSIBLE FOR PAYING WORKERS' COMPENSATION BENEFITS UNDER ARTICLES 40 TO 47 OF THIS TITLE TO THE EMPLOYEE OR, IF THE EMPLOYEE IS DECEASED, THE EMPLOYEE'S DEPENDENTS, MAKES A DEMAND UPON OR A REQUEST OF A PERSON OR ENTITY NOT IN THE SAME EMPLOY AS THE EMPLOYEE TO SEEK RECOVERY FOR DAMAGES ARISING FROM ACTIONS OF THE OTHER PERSON OR ENTITY, THE PARTY RESPONSIBLE FOR PAYING THE WORKERS' COMPENSATION BENEFITS SHALL ALSO GIVE WRITTEN NOTICE, WITHIN TEN DAYS, TO THE DIVISION OF WORKERS' COMPENSATION AND TO THE EMPLOYEE OR, IF THE EMPLOYEE IS DECEASED, TO THE EMPLOYEE'S DEPENDENTS.

(III) THE NOTICE REQUIREMENTS OF THIS PARAGRAPH (a) SHALL NOT APPLY TO

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

DEMANDS OR REQUESTS SEEKING THE RECOVERY OF MEDICAL PAYMENTS ONLY, AND NOT SEEKING THE RECOVERY OF ANY OTHER TYPE OF DAMAGE OR LOSS.

(b) The notice required by this subsection (4) shall contain the following:

(I) A description of the claim;

(II) The names and addresses of any and all other persons believed to be negligent;

(III) The name and address of any attorney representing the employee or dependents;

(IV) The name and address of any attorney representing other persons believed to be negligent; and

(V) The name, address, and telephone number of the insurance company or third-party administrator.

(c) (I) ~~The employee or, if the employee is deceased, the employee's dependents~~ EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (c), AT LEAST TWENTY DAYS BEFORE COMMENCING A LAWSUIT OR ARBITRATION PROCEEDING TO RECOVER DAMAGES ARISING FROM ACTIONS OF ANOTHER PERSON OR ENTITY, THE PARTY INITIATING SUCH LAWSUIT OR ARBITRATION shall give written notice to all parties who may be responsible for paying benefits to the employee or dependents under articles 40 to 47 of this title ~~at least twenty days prior to filing a lawsuit against such other person; except that, if any applicable statutory limitation period would expire before such twenty days have passed, the employee or dependents may file or serve the complaint, or otherwise act to toll the running of such limitation period; before such twenty days have passed~~ AND TO THE EMPLOYEE OR, IF THE EMPLOYEE IS DECEASED, THE EMPLOYEE'S DEPENDENTS. Such notice shall contain all of the information set out in paragraph (b) of this subsection (4) and shall be accompanied by a draft copy of the complaint.

(II) IF ANY APPLICABLE STATUTORY LIMITATION PERIOD WOULD EXPIRE BEFORE SUCH TWENTY DAYS HAVE PASSED, THE PARTY INITIATING SUCH LAWSUIT OR ARBITRATION MAY FILE OR SERVE THE COMPLAINT, OR OTHERWISE ACT TO TOLL THE RUNNING OF SUCH LIMITATION PERIOD, BEFORE SUCH TWENTY DAYS HAVE PASSED. THE PARTY INITIATING THE LAWSUIT OR ARBITRATION SHALL PROVIDE THE NOTICE REQUIRED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) WITHIN TWENTY DAYS AFTER COMMENCING SUCH ACTION.

(d) If the employee or dependents fail to provide the written notice required pursuant to ~~paragraphs (a) and (b)~~ SUBPARAGRAPH (I) OF PARAGRAPH (a) of this subsection (4):

(I) The party responsible for paying workers' compensation benefits shall be entitled to reimbursement from all moneys collected from the third party for all economic damages and for all physical impairment and disfigurement damages, without any credit for reasonable attorney fees as provided in paragraph (e) of subsection (1) of this section. If the trier of fact makes a separate award for disfigurement damages, reimbursement from such disfigurement damage award shall

be limited to the amount the party paying workers' compensation benefits paid, or is obligated to pay, in disfigurement damages pursuant to articles 40 to 47 of this title. Such rights shall not extend to moneys collected for noneconomic damages awarded for pain and suffering, inconvenience, emotional stress, or impairment of quality of life.

(II) The employee or dependents shall not be liable for any plaintiff's attorney fees for the third-party recovery on that portion of any recovery equal to the assigned and subrogated interest and are not subject to any action for refusal to pay such plaintiff's attorney fees resulting from the third-party case.

(e) IF THE PARTY RESPONSIBLE FOR PAYING WORKERS' COMPENSATION BENEFITS UNDER ARTICLES 40 TO 47 OF THIS TITLE FAILS TO PROVIDE THE WRITTEN NOTICE REQUIRED PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION (4), THE AMOUNT OF THE CLAIM SHALL BE REDUCED BY FIFTY DOLLARS FOR EACH DAY SUCH NOTICE WAS NOT GIVEN TO THE EMPLOYEE OR, IF THE EMPLOYEE IS DECEASED, THE EMPLOYEE'S DEPENDENTS, IN AN AMOUNT NOT TO EXCEED TWENTY PERCENT OF THE AMOUNT OF THE TOTAL ASSIGNED INTEREST AT THE TIME SUCH NOTICE SHOULD HAVE BEEN GIVEN. THE FAILURE TO PROVIDE SUCH NOTICE SHALL BE A REASSIGNMENT OF A PORTION OF THE CLAIM TO THE EMPLOYEE OR, IF THE EMPLOYEE IS DECEASED, THE EMPLOYEE'S DEPENDENTS, IN AN AMOUNT EQUAL TO THE PENALTY.

SECTION 2. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 4, 2004, if adjournment sine die is on May 5, 2004); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to injuries to an employee occurring on or after the applicable effective date of this act.

Approved: March 9, 2004