

Bill 15
Mr. Webber

BILL 15

2005

WORKERS' COMPENSATION AMENDMENT ACT, 2005

(Assented to , 2005)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Amends RSA 2000 cW-15

1 The *Workers' Compensation Act* is amended by this Act.

2 Section 17(2) is amended by striking out “or any member of the Board” **and substituting** “, any employee or officer of the Board or any member of the board of directors”.

3 Section 22 is repealed and the following is substituted:

Action vests in the Board

22(1) In this section,

- (a) “action” means a cause of action and all rights of recovery of a claimant, whether inside or outside Alberta, against any person or persons, in respect of or arising out of the personal injury to or the death of a worker;
- (b) “claimant” means a worker, a worker’s legal personal representative or a worker’s dependants;

(c) “compensation costs” means the present and future costs, as determined by the Board, of all benefits paid or payable to or on behalf of a claimant under this Act including, without limitation, all disability, medical aid and vocational rehabilitation benefits.

(2) This section applies

- (a) to all actions that exist on the date this section comes into force that have not been reduced to written settlement or judgment by that date, and
- (b) to all actions commenced after the date this section comes into force.

(3) Notwithstanding any other Act, if an accident happens to a worker entitling a claimant to compensation under this Act, any action of the claimant in respect of that accident vests solely in the Board.

(4) Nothing in subsection (3) shall be construed so as to affect the operation of section 13(b) of the *Motor Vehicle Accident Claims Act*.

(5) Where an action vests in the Board under subsection (3),

- (a) the Board
 - (i) may bring the action in the name of the claimant for the entire value of the action including, without limitation, all compensation costs,
 - (ii) has the same right to recover any amounts in the action that the claimant would have been entitled to recover, including the compensation costs as if the claimant had been required to pay the compensation costs,
 - (iii) has the same right to pursue all of the same claims for losses and damages in the action as the claimant would have had but for the vesting of the action in the Board, whether or not those claims or damages have been accepted by the Board, in whole or in part, in the adjudication of the compensation claim,

- (iv) has sole control of the action including, without limitation,
 - (A) determining whether or not to bring the action,
 - (B) compromising and effecting a settlement of the action at any time for any amount it considers advisable,
 - (C) fully or partially releasing any party from liability, and
 - (D) retaining and instructing counsel of its choice, including counsel employed by the Board, to bring the action,

and

- (v) may enter evidence by way of a certificate issued under section 149,

and

- (b) the court, in hearing the action, may consider any evidence that the Board gathered in its adjudication of the claimant's compensation claim.

(6) No decision made or required to be made by the Board under this section shall be construed as placing the Board in a conflict of interest in respect of a decision made or required to be made by the Board under any other section of this Act, nor shall the pursuit of an action under this section by the Board be construed as placing the Board in a fiduciary relationship with the claimant.

(7) Notwithstanding anything to the contrary in this section, no legal fees are payable by the Board to counsel retained by a claimant in respect of an action to which the *Motor Vehicle Accident Claims Act* applies.

(8) No settlement may be made and no payment shall be made to any person other than the Board or its designate for or in respect of any action except with the approval of the Board, and any release, payment or settlement made in contravention of this subsection is void.

(9) The claimant shall not prejudice the position of the Board in an action and shall co-operate fully with the Board in bringing an action or any appeal of an action including, without limitation, by

- (a) securing and providing any or all information or evidence,
- (b) attending at any or all meetings, mediations, arbitrations, examinations for discovery, medical examinations, including independent medical examinations, and the trial of the action, and
- (c) providing and executing any or all documents required by the Board to bring the action, including endorsing an assignment or release of the action and providing consents to secure information, in the form and manner prescribed by the Board, in favour of the Board,

as and when required by the Board.

(10) If a claimant does not comply with subsection (9), the Board may

- (a) withhold payments of compensation to the claimant, and
- (b) declare an overpayment in respect of any compensation paid to the claimant and recover that amount as a debt due to the Board.

(11) All proceeds of settlement or judgment resulting from an action, including any costs and disbursements recovered, shall be paid to the Board or its designate and shall be distributed in the following order:

- (a) payment of any costs awarded against the claimant;
- (b) payment of disbursements approved or incurred by the Board;
- (c) if the claimant has complied with subsection (9), payment of 25% of the remaining amount to the claimant;

- (d) where the Board retained counsel to bring the action, payment of legal fees from the proceeds of the action in an amount prescribed by the regulations unless the Board determines that that amount is insufficient, in which case the Board may increase the amount;
- (e) where the action was pursued by counsel employed by the Board, payment of an administration fee as determined by the Board;
- (f) payment of any compensation costs;
- (g) payment of the balance, if any, to the claimant.

(12) The Board shall set off any amount due to the Board by a claimant against any payment under subsection (11)(c) or (g) or both.

(13) Where future compensation costs are incurred by the Board in addition to the compensation costs recovered under subsection (11)(f) and a payment is made to the worker under subsection (11)(g), the amount of the payment is deemed to be an advance of any future benefits determined to be payable under Part 4, including benefits relating to periods of time prior to the date of settlement or judgment, and shall be set off against any of those future benefits.

4 Section 23(2) is amended by striking out “taken pursuant to section 22(4)(b) and arising out of injury to or death of a worker,” **and substituting** “to which section 22 applies,”.

5 Section 28(7) is repealed.

6 Section 31 is repealed.

7 Section 60(1) is amended by striking out “total”.

8 Section 99 is amended by striking out “Provincial Treasurer” and substituting “Minister, in favour of the Minister of Finance”.

9 Sections 142 and 143 are amended by adding “to” after “due”.

10 Section 153(1)(l) is amended by striking out “22(5)” and substituting “22(11)”.

Explanatory Notes

1 Amends chapter W-15 of the Revised Statutes of Alberta 2000.

2 Section 17(2) presently reads:

(2) No proceedings by or before the Board shall be restrained by injunction, prohibition or other process or proceedings in any court or are removable by certiorari or otherwise into any court, nor shall any action be maintained or brought against the Board or any member of the Board in respect of any act or decision done or made in the honest belief that it was within the jurisdiction of the Board.

3 Section 22 presently reads:

22(1) If an accident happens to a worker entitling the worker or the worker’s dependants to compensation under this Act and the circumstances of the accident are such as to also entitle the worker, the worker’s legal personal representatives or the worker’s dependants to an action against some person other than an employer or worker in an industry to which this Act applies in respect of the personal injury to or death of the worker, the Board is subrogated to

the rights of the worker, the worker's legal personal representatives or the worker's dependants in respect of that cause of action.

(2) Where a worker referred to in subsection (1) or the worker's dependant receives compensation under this Act in respect of the personal injury suffered by the worker, the worker or the worker's legal personal representative or the dependant has the same right to recover the cost of that compensation from the person referred to in subsection (1) as the worker or the worker's legal personal representative or the dependant would have if the worker or dependant had been required to pay the whole cost of the compensation the worker or dependant received, and the Board is subrogated to the rights of the worker or the worker's legal personal representative or the dependant in respect of that cause of action.

(3) Subsection (2) applies to causes of action under subsection (1) that exist on July 27, 1988 that have not on that date been settled or reduced to judgment.

(4) When the Board becomes subrogated to the rights of a worker, the worker's legal personal representatives or the worker's dependants under subsection (1) or (2),

(a) no payment or settlement may be made to or with the worker, the worker's legal personal representatives or the worker's dependants for or in respect of those rights or for or in respect of any claim, cause of action or judgment arising out of them except with the consent of the Board, and any payment or settlement made in contravention of this clause is void,

(b) an action against any person arising out of injury to or the death of the worker may, with the consent of the Board and on the terms that are satisfactory to the Board, be taken by the worker, the worker's legal personal representatives or the worker's dependants, or by the Board in the name of the worker, the worker's legal personal representatives or the worker's dependants, without the consent of the person in whose name the action is taken,

(c) *if an action is taken by the Board it shall indemnify and save harmless the worker, the worker's legal personal representatives and the worker's dependants from and against all costs and damages incurred in respect of that action, including costs and damages awarded by the court to the defendant, but excluding any costs that have been incurred by the worker, the worker's legal personal representatives or the worker's dependants without authority of the Board, and*

(d) *the Board may at any time, whether or not an action has been taken by the Board, the worker, the worker's legal personal representatives or the worker's dependants, and whether or not judgment has been given in any action, effect a settlement of the claim for any amount it considers advisable.*

(5) *If the Board gives its consent under subsection 4(b), the legal costs incurred on behalf of the worker, the worker's legal personal representatives or the worker's dependants in taking the action shall be paid by the Board in the amount prescribed in the regulations unless the legal representative of the worker, or the worker's legal personal representatives or dependants satisfy the Board that that amount is insufficient, in which case the Board may increase the amount.*

(6) *If in any action in which the Board is subrogated to the rights of the worker, the worker's legal personal representatives or the worker's dependants, payment into court is made pursuant to the Alberta Rules of Court, the clerk of the court, on receipt of notice by the Board of its subrogation in the matter, shall not make payment out of court except with the consent of the Board.*

(7) *If money is received by the Board because it is subrogated to the rights of a worker, the worker's legal personal representatives or the worker's dependants,*

(a) *the Board may accept the money and give a receipt for it and, if the money is accepted in full settlement, may release the person paying the money or on whose behalf the money is paid from liability in respect of the personal injury to or death of the worker resulting from the accident,*

- (b) *if the judgment of the court under which the money is received clearly indicates that a portion of the award is for pain and suffering suffered by the worker and resulting from the injury, the Board may pay to the worker from the money remaining in its hands after payment of all legal costs incurred in recovering that money, an amount that bears the same proportion to the money remaining in its hands as the portion of the award that is attributable to pain and suffering bears to the total award,*
- (c) *if the money is received as a result of action taken or negotiations carried on by the worker, the worker's legal personal representatives or the worker's dependants, the Board may pay to that person from the money remaining in its hands after payment of all legal costs incurred in recovering the money, an amount equal to 25% of the gross amount received by the Board, but in any case when payment is made to the worker under clause (b), payment to the worker under this clause shall be made only to the extent by which 25% of the money received exceeds the payment made to the worker under clause (b), and*
- (d) *if the balance of the money remaining in the Board's hands after payment of all legal costs incurred in recovering the money and after payment of the amounts, if any, under clauses (b) and (c), exceeds the costs of the accident to the Board, including the capital cost of any pension award, the excess shall be paid over to the worker, the worker's legal

personal representatives or the worker's dependants, as the case may be.*

4 Section 23(2) presently reads:

(2) In an action taken pursuant to section 22(4)(b) and arising out of injury to or death of a worker, a defendant may not bring third party or other proceedings against any employer or worker whom the plaintiff may not, by reason of this section bring an action against, but if the court is of the

opinion that that employer or worker, by that employer's or worker's fault or negligence, contributed to the damage or loss of the plaintiff, it shall hold the

defendant liable only for that portion of the damage or loss occasioned by the defendant's own fault or negligence.

5 Section 28(7) presently reads:

(7) Subsection (6) does not affect the right to compensation of a worker or dependant who takes an action at the request of the Board under section 31.

6 Section 31 presently reads:

31(1) If a worker or dependant entitled to compensation under this Act has a right of action in a jurisdiction other than Alberta in respect of personal injury to or death of the worker,

(a) the Board may request the worker or dependant to take an action in that other jurisdiction, and

(b) the worker or dependant shall assign the worker's or dependant's right to damages recoverable, and all damages that the worker or dependant recovers, under that action to the Board

and the Board may withhold payment of compensation to the worker or dependant until the worker or dependant takes the action or makes the assignment, as the case may be.

(2) If the Board requests the worker or dependant to take an action in another jurisdiction, it shall repay to the worker or dependant the costs necessarily incurred by the worker or dependant in the prosecution of the action, but the Board is not required to pay the costs of any appeal unless the appeal is taken at the request or with the approval of the Board.

7 Section 60(1) presently reads:

60(1) If after December 31, 1989 a worker is receiving compensation for temporary total disability 24 months after the date of the accident, the Board shall adjust the compensation by the same percentage as it would have had the worker been permanently totally disabled at the time of the accident.

8 Section 99 presently reads:

99 The Board may include in its assessment on employers amounts that will enable the Board to carry out its obligations under section 39 of the Occupational Health and Safety Act and pay those amounts to the Provincial Treasurer.

9 Sections 142 and 143 presently read:

142 When compensation payments have been made by the Board to a worker beyond the period of the worker's disability or to a worker or dependant in an amount in excess of that to which the worker or dependant is entitled, the amount of the overpayment may be recovered by the Board as a debt due the Board.

143 Without limiting the Board's remedies for recovery, any money due the Board under this Act may be set off against any compensation that may be or that may become payable to the person indebted to the Board.

10 Section 153(1)(l) presently reads:

153(1) The Lieutenant Governor in Council may make regulations

- (l) governing the legal costs and fees payable for the purposes of sections 22(5) and 34(2);*