

HB497 INTRODUCED



1 FBNWDD-1
2 By Representatives Kirkland, Fincher, Bolton, Starnes, Lomax,
3 Crawford, Stubbs, Shaw
4 RFD: Commerce and Small Business
5 First Read: 18-May-23
6 2023 Regular Session



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SYNOPSIS:

Under existing law, when an employee is injured or killed in a work-related accident caused in whole or in part by a party that is not the employer, the employee or the employee's survivors, in addition to a claim against the employer for workers' compensation, may also pursue the party that caused the accident for damages in a separate civil suit. If damages are recovered from the party, the amount of the recovery is credited to the amount of the employer's workers' compensation obligation to the employee or the employee's survivors. The employer's right to reimbursement extends to bringing its own civil suit against the party that injured the employee where the employee or the employee's survivors have not obtained recovery from the party.

However, in a case in which an employee is injured or killed on the job in a vehicle accident, uninsured and underinsured motorist insurance benefits paid for by the employer cannot be used to reimburse the employer for its workers' compensation paid or due to the employee.

This bill would allow an employer to seek reimbursement for its workers' compensation obligation from uninsured or underinsured motorist insurance that



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29 it has purchased in a case where an employee has been
30 hurt or killed in a work-related vehicle accident.

31 This bill would also specify that in case of a
32 settlement between an employee or the employee's
33 survivors with the party that caused the injury, any
34 portion of the employee's attorney fees for which the
35 employer is responsible shall exclude the costs and
36 expenses of the attorney.

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A BILL

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TO BE ENTITLED

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AN ACT

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43 Relating to workers' compensation; to amend Section
44 25-5-11, Code of Alabama 1975, to further provide for the
45 employer's right of subrogation against uninsured and
46 underinsured motorist insurance; and to specify that in a
47 settlement of claims against a third party, the employer's
48 share of the employee's attorney fees does not include costs
49 or expenses.

50 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

51 Section 1. Section 25-5-11, Code of Alabama 1975, is
52 amended to read as follows:

53 "§25-5-11

54 (a) If the injury or death for which compensation is
55 payable under Articles 3 or 4 of this chapter was caused under
56 circumstances also creating a legal liability for damages on



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57 the part of any party other than the employer, whether or not
58 the party is subject to this chapter, the employee, or his or
59 her dependents in case of death, may proceed against the
60 employer to recover compensation under this chapter or may
61 agree with the employer upon the compensation payable under
62 this chapter, and at the same time, may bring an action
63 against the other party to recover damages for the injury or
64 death, and the amount of the damages shall be ascertained and
65 determined without regard to this chapter. If a party, other
66 than the employer, is a workers' compensation insurance
67 carrier of the employer or any person, firm, association,
68 trust, fund, or corporation responsible for servicing and
69 payment of workers' compensation claims for the employer, or
70 any officer, director, agent, or employee of the carrier,
71 person, firm, association, trust, fund, or corporation, or is
72 a labor union, or any official or representative thereof, or
73 is a governmental agency providing occupational safety and
74 health services, or an employee of the agency, or is an
75 officer, director, agent, or employee of the same employer, or
76 his or her personal representative, the injured employee, or
77 his or her dependents in the case of death, may bring an
78 action against any workers' compensation insurance carrier of
79 the employer or any person, firm, association, trust, fund, or
80 corporation responsible for servicing and payment of workers'
81 compensation claims for the employer, labor union, or the
82 governmental agency, or person, or his or her personal
83 representative, only for willful conduct which results in or
84 proximately causes the injury or death. If the injured



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85 employee, or in case of death, his or her dependents, recovers
86 damages against the other party, the amount of the damages
87 recovered and collected shall be credited upon the liability
88 of the employer for compensation. If the damages recovered and
89 collected are in excess of the compensation payable under this
90 chapter, there shall be no further liability on the employer
91 to pay compensation on account of the injury or death. If the
92 injured employee, or in the case of death, his or her
93 dependents, recovers damages against the employer's uninsured
94 or underinsured motorist coverage, the amount of the damages
95 recovered and collected shall be credited upon the liability
96 of the employer. If the damages recovered and collected are in
97 excess of the compensation payable under this chapter, there
98 shall be no further liability on the employer to pay
99 compensation on account of the injury or death. To the extent
100 of the recovery of damages against the other party, the
101 employer shall be entitled to reimbursement for the amount of
102 compensation theretofore paid on account of injury or death.
103 If the employee who recovers damages is receiving or entitled
104 to receive compensation for permanent total disability, then
105 the employer shall be entitled to reimbursement for the amount
106 of compensation theretofore paid, and the employer's
107 obligation to pay further compensation for permanent total
108 disability shall be suspended for the number of weeks which
109 equals the quotient of the total damage recovery, less the
110 amount of any reimbursement for compensation already paid,
111 divided by the amount of the weekly benefit for permanent
112 total disability which the employee was receiving or to which



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113 the employee was entitled. For purposes of this amendatory
114 act, the employer shall be entitled to subrogation for medical
115 and vocational benefits expended by the employer on behalf of
116 the employee; however, if a judgment in an action brought
117 pursuant to this section is uncollectible in part, the
118 employer's entitlement to subrogation for such medical and
119 vocational benefits shall be in proportion to the ratio the
120 amount of the judgment collected bears to the total amount of
121 the judgment.

122 (b) If personal injury or death to any employee results
123 from the willful conduct, as defined in subsection (c) herein,
124 of any officer, director, agent, or employee of the same
125 employer or any workers' compensation insurance carrier of the
126 employer or any person, firm, association, trust, fund, or
127 corporation responsible for servicing any payment of workers'
128 compensation claims for the employer, or any officer,
129 director, agent, or employee of the carrier, person, firm,
130 association, trust, fund, or corporation, or of a labor union,
131 or an official or representative thereof, the employee shall
132 have a cause of action against the person, workers'
133 compensation carrier, or labor union.

134 (c) As used herein, "willful conduct" means any of the
135 following:

136 (1) A purpose or intent or design to injure another;
137 and if a person, with knowledge of the danger or peril to
138 another, consciously pursues a course of conduct with a
139 design, intent, and purpose of inflicting injury, then he or
140 she is guilty of "willful conduct."



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141 (2) The willful and intentional removal from a machine
142 of a safety guard or safety device provided by the
143 manufacturer of the machine with knowledge that injury or
144 death would likely or probably result from the removal;
145 provided, however, that removal of a guard or device shall not
146 be willful conduct unless the removal did, in fact, increase
147 the danger in the use of the machine and was not done for the
148 purpose of repair of the machine or was not part of an
149 improvement or modification of the machine which rendered the
150 safety device unnecessary or ineffective.

151 (3) The intoxication of another employee of the
152 employer if the conduct of that employee has wrongfully and
153 proximately caused injury or death to the plaintiff or
154 plaintiff's decedent, but no employee shall be guilty of
155 willful conduct on account of the intoxication of another
156 employee or another person.

157 (4) Willful and intentional violation of a specific
158 written safety rule of the employer after written notice to
159 the violating employee by another employee who, within six
160 months after the date of receipt of the written notice,
161 suffers injury resulting in death or permanent total
162 disability as a proximate result of the willful and
163 intentional violation. The written notice to the violating
164 employee shall state with specificity all of the following:

- 165 a. The identity of the violating employee.
166 b. The specific written safety rule being violated and
167 the manner of the violation.
168 c. That the violating employee has repeatedly and



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169 continually violated the specific written safety rule referred
170 to in b. above with specific reference to previous times,
171 dates, and circumstances.

172 d. That the violation places the notifying employee at
173 risk of great injury or death.

174 A notice that does not contain all of the above
175 elements shall not be valid notice for purposes of this
176 section. An employee shall not be liable for the willful
177 conduct if the injured employee himself or herself violated a
178 safety rule, or otherwise contributed to his or her own
179 injury. No employee shall be held liable under this section
180 for the violation of any safety rule by any other employee or
181 for failing to prevent any violation by any other employee.

182 (d) In the event the injured employee, or his or her
183 dependents, in case of death, do not file a civil action
184 against the other party to recover damages within the time
185 allowed by law, the employer or the insurance carrier for the
186 employer shall be allowed an additional period of six months
187 within which to bring a civil action against the other party
188 for damages on account of the injury or death. In the event
189 the employer or the insurance carrier has paid compensation to
190 the employee or his or her dependent, or in the event a
191 proceeding is pending against the employer to require the
192 payment of the compensation, the civil action may be
193 maintained either in the name of the injured employee, his or
194 her dependent in case of death, the employer, or the insurance
195 carrier. In the event the damages recovered in the civil
196 action are in excess of the compensation payable by the



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197 employer under this chapter and costs, attorney's fees, and
198 reasonable expenses incurred by the employer in making the
199 collection, the excess of the amount shall be held in trust
200 for the injured employee or, in case of death, for the
201 employee's dependents. If the injured employee has no
202 dependent, the personal representative, in the event of death,
203 may bring a civil action against the other party to recover
204 damages without regard to this chapter.

205 (e) In a settlement made under this section with a
206 third party by the employee or, in case of death, by his or
207 her dependents, the employer shall be liable for that part of
208 the attorney's fees, excluding any costs or expenses, incurred
209 in the settlement with the third party, with or without a
210 civil action, in the same proportion that the amount of the
211 reduction in the employer's liability to pay compensation
212 bears to the total recovery had from the third party. For
213 purposes of the subrogation provisions of this subsection
214 only, "compensation" includes medical expenses, as defined in
215 Section 25-5-77, if and only if the employer is entitled to
216 subrogation for medical expenses under subsection (a) of this
217 section.

218 (f) For the purpose of this section, a carrier, person,
219 firm, association, trust, fund, or corporation includes a
220 company or a governmental agency making a safety inspection on
221 behalf of a self-insured employer or its employees, and an
222 officer, director, agent, or employee of the company or a
223 governmental agency."

224 Section 2. This act shall become effective on the first



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225 day of the third month following its passage and approval by
226 the Governor, or its otherwise becoming law.