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IN THE HOUSE

BY MR. TAYLOR

HOUSE BILL NO. 370

IN THE LEGISLATURE OF THE STATE OF ALASKA

SECOND LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the Alaska Workmen's Compensation Act; permitting an employee compensation and recovery against a third person; creating a lien in favor of the employer; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Section 1. Sec. 30, Ch. 193, SLA 1959 is repealed and re-enacted to read:

Sec. 30. COMPENSATION FOR INJURIES WHERE THIRD PERSONS ARE LIABLE. (1) If on account of a disability or death for which compensation is payable under this Act, the person entitled to such compensation believes that some person other than the employer is liable in damages, he may receive such compensation and recover damages against such third person.

(2) Acceptance of such compensation under an award in a compensation order filed by the Board shall give rise to a lien in favor of the employer, up to the amount of compensation under an award, on any recovery by the person against such third person.

(3) a. A person or his representative shall give notice to the employer and the Board within six months from the date of the disability or death for which compensation

1 is payable under this Act, of his intention to recover or  
2 not to recover damages against such third person.

3 b. When a person accepts compensation under an  
4 award in a compensation order filed by the Board and gives  
5 notice that he does not intend to recover damages against  
6 such third person, or fails to give notice within six months  
7 as provided in Subdiv. a. of this subsection, the employer is  
8 assigned all the right of the person entitled to compensa-  
9 tion to recover damages against such third person. Such  
10 employer on account of such assignment may either institute  
11 proceedings for the recovery of such damages or may compro-  
12 mise with such third person either without or after institut-  
13 ing such proceedings.

14 (4) The employer's lien under Subsec. (2) of this  
15 section shall include the following:

16 a. the cost of all benefits actually furnished by  
17 him to the employee under Sec. 6;

18 b. all amounts paid as compensation;

19 c. the present value of all accounts thereafter  
20 payable as compensation, such present value to be computed  
21 in accordance with a schedule prepared by the Board, and the  
22 present value of the cost of all benefits thereafter to be  
23 furnished under Sec. 6 to be estimated by the Board.

24 (5) Any amount recovered by an employer on account of  
25 such assignment under Subsec. (3)b of this section, whether  
26 or not as the result of a compromise, shall be distributed  
27 as follows:

28 a. The employer shall retain an amount equal to  
29 (1) the expense incurred by him in respect

1 to such proceedings or compromise, including a reasonable  
2 attorney fee as determined by the Board;

3 (2) the cost of all benefits actually  
4 furnished by him to the employee under Sec. 6;

5 (3) all amounts paid as compensation;

6 (4) the present value of all amounts there-  
7 after payable as compensation, such present value to be  
8 computed in accordance with a schedule prepared by the  
9 Board, and the present value of the cost of all benefits  
10 thereafter to be furnished under Sec. 6 to be estimated  
11 by the Board, and the amounts so computed and estimated  
12 to be retained by the employer as a trust fund to pay  
13 such compensation and the cost of such benefits as they  
14 become due, and to pay any sum finally remaining in  
15 excess thereof to the person entitled to compensation or  
16 to the representative; and

17 b. the employer shall pay any excess to the per-  
18 son entitled to compensation or to the representative.

19 (6) If the person entitled to compensation or the  
20 representative elects to recover damages against such third  
21 person and notifies the Board of his election under Subsec.  
22 (3)a of this section and institutes proceedings within the  
23 period prescribed in Sec. 12, the employer shall be required  
24 to pay as compensation under this Act any additional sum  
25 equal to the excess of the amount which the Board determines  
26 is payable on account of such injury or death over the  
27 amount recovered against such third person.

28 (7) If a compromise with such third person is made by  
29 the person entitled to compensation or such representative

1 of an amount less than the compensation to which such person  
2 or representative would be entitled to under this Act, the  
3 employer shall be liable for compensation as determined in  
4 Subsec. (4) or (5) of this section only if such compromise  
5 is made with his written approval.

6 (8) The Board may, if the person entitled to compen-  
7 sation under this Act is a minor, make any election re-  
8 quired under Subsec. (3)a or (3)b of this section, or may  
9 authorize the parent or guardian of the minor to make such  
10 election.

11 (9) Where the employer is insured and the insurance  
12 carrier has assumed the payment of the compensation, the  
13 insurance carrier shall be subrogated to all the rights of  
14 the employer under this section.

15 Sec. 2. Subsec. (4), Sec. 6, Ch. 193, SLA 1959 is amended  
16 to read:

17 (4) The liability of an employer for medical  
18 treatment as herein provided, shall not be affected by the  
19 fact that his employee was injured through the fault or  
20 negligence of a third party not in the same employ. [, UN-  
21 LESS AND UNTIL NOTICE OF ELECTION TO SUE HAS BEEN GIVEN AS  
22 REQUIRED BY SECTION 30(1) OR SUIT HAS BEEN BROUGHT AGAINST  
23 SUCH THIRD PARTY WITHOUT THE GIVING OF SUCH NOTICE. THE  
24 EMPLOYER SHALL, HOWEVER, HAVE A CAUSE OF ACTION AGAINST SUCH  
25 THIRD PARTY TO RECOVER ANY AMOUNTS PAID BY HIM FOR SUCH  
26 MEDICAL TREATMENT IN LIKE MANNER AS PROVIDED IN SECTION  
27 30(2) OF THIS ACT.]

28 Sec. 3. This Act takes effect on the day after its passage  
29 and approval or on the day it becomes law without such approval.