

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1815

H. P. 1359

House of Representatives, April 3, 1973

Referred to Committee on Labor. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. McTeague of Brunswick.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Relating to Procedure with Respect to Claims Against Third
Persons under Workmen's Compensation Act.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 39, § 68, repealed and replaced. Section 68 of Title 39 of the Revised Statutes, as repealed and replaced by chapter 84 of the public laws of 1969, is repealed and the following enacted in place thereof:

§ 68. Liability of third persons; subrogation

When an injury or death for which compensation or benefits payable under this Act shall have been sustained under circumstances creating in some person other than the employer a legal liability to pay damages in respect thereto, the injured employee or compensation beneficiary may, at his option, either claim such compensation and benefits, or obtain damages from or proceed at law against such other person to recover damages.

If the injured employee or compensation beneficiary elects at any time to claim compensation and benefits under this Act, any employer having paid such compensation or benefits, or having been subjected to liability for compensation or benefits under any decree or approved agreement shall have a lien as hereinafter provided on any damages subsequently recovered against the third person liable for the employee's injury, whether such recovery be by judgment, settlement or otherwise. If the employee or compensation beneficiary fails to pursue such legal remedy against the third person within 30 days after written demand by an employer or its compensation insurer in interest and notice to the commission and advise to the injured employee as provided in section 68-A, the employer or its compensation insurer shall be

subrogated to the rights of the injured employee or compensation beneficiary and shall be entitled to enforce liability in either the name of the employer or its compensation insurer, or in the name of the injured employee or compensation beneficiary.

If a remedy at law is pursued against a third person, either by the employee or compensation beneficiary, or by the employer or its compensation insurer, and recovery is made thereon, whether by judgment, settlement or otherwise, the accounting for the proceeds recovered is to be made on the following basis:

1. Proportionate treatment. It is the intent of this section to consider the rights of the employer or its compensation insurer as derivative from the rights of employee or compensation beneficiary and that therefore recovery against the third party shall be divided and treated as hereinafter provided so that in the event that the recovery is less than full compensation for the injuries or death that each party's rights shall be reduced pro rata as compared to full compensation giving due regard to:

- A. Comparative negligence and other defenses;
- B. Limited insurance or other assets available to the third party to pay the recovery;
- C. The exigencies of judicial proof;
- D. Uncertainties of law applying to the third party action.

2. Proportionate reimbursement. The employer or its compensation insurer shall be proportionately reimbursed for the amount of the compensation and benefits paid to the employee or compensation beneficiary under this Act, less the employer's or compensation insurer's share of costs of collection, including reasonable attorney's fees, which share shall be determined based upon the percentage such proportional reimbursement bears to the total recovery actually achieved.

3. Costs. All costs of collection, including reasonable attorney's fees, shall be deducted from the amount of the compensation and benefits reimbursed to the employer or its compensation insurer, and from the amount in excess comprising the difference between such proportionally reimbursed amount and the total recovery, on a percentage basis reflecting the relation such proportional reimbursement has to the total amount recovered. An attorney's fee in excess of 25% of the total amount of the recovery shall not be approved.

4. Damages. In the event the employee or compensation beneficiary recovers damages from a third person, after deducting the proportionate lien, and the proportionate share of the costs of collection from the balance of such recovery, the excess shall be distributed in either of the following methods, at the option of the employee or compensation beneficiary:

- A. To be paid directly to the employee or compensation beneficiary; in which event the employer or its compensation insurer may petition the

commission for a suspension of all compensation and benefits payable under this Act until such time as the amounts due after such suspension equal or exceed the amount actually received by the employee or compensation beneficiary under this subsection as adjusted proportionally; or,

B. To be paid to a trust, the purpose of which will be to provide an additional annual income to the employee or compensation beneficiary in addition to their compensation and benefits under this Act, together with protecting the principal of such trust for the benefit of, and eventual proportionate reimbursement to, the employer or compensation insurer toward any compensation or benefits paid by them after the formation of such trust to such employee or compensation beneficiary, or on their behalf. All interested parties shall attempt to agree as to the naming of a trustee, the life of the trust, and the manner, terms and provisions of the trust, failing which, any interested party may petition the commission to determine such issues and the commission shall settle all disputed details concerning such trust, keeping in mind the purposes of such trust as set forth herein.

5. Future liability. At the time of such distribution, if the future liability of the employer or compensation insurer under this Act to the employee or compensation beneficiary can be reasonably determined, and such future liability adjusted proportionally is less than the excess recovery, as defined in subsection 4, the employee or compensation beneficiary shall have distributed to them the difference between such future liability and such excess recovery and subsection 4, paragraphs A and B shall not apply to the amount of any such difference. If the employer or compensation insurer recovers from a third person damages in excess of the compensation and benefits paid, or for which they have become liable therefor under any decree or approved agreement under this Act.

6. Approval. Settlement of any claims against a third person and the distribution of the proceeds therefrom must have the approval of the court wherein the action is pending or to which it is returnable; or if not in suit, of a single commissioner. When the court is in vacation, any Justice of the Superior Court shall have the power to approve the settlement and distribution of the proceeds therefrom. The employee or compensation beneficiary and employer or compensation insurer shall be entitled to reasonable notice and the opportunity to be present in person or by counsel and to present evidence at such approved hearing.

7. Prior payment. Should recovery be had from a third person as the result of a claim based upon an injury for which compensation or benefits were received under this Act, by either the employee or compensation beneficiary, or by the employer or compensation insurer, without the knowledge and approval of the distribution of such recovery by the other, the party not participating in such recovery may proceed at law as provided by this section against the third person and any release from any other party shall not operate as a bar to such action, and the fact of prior payment by the third person shall be admissible as an admission against interest as to the issue of such third person's liability to the employee.

Sec. 2. R. S., T. 39, §§ 68-A and 68-B, additional. Title 39 of the Revised Statutes is amended by adding 2 new sections 68-A and 68-B, to read as follows:

§ 68-A. Notification

The commissioner immediately upon receipt of a notice of subrogation from an employer or its compensation insurer shall send a copy of said notice and its written advice specifying the rights of an injured employee or compensation beneficiary under section 68.

§ 68-B. Evidence

No evidence or comments or any other thing regarding compensation and benefits payable under this Title shall be allowed in the trial of any third party action.

Sec. 3. R. S., T. 39, § 93, sub-§ 3, amended. Subsection 3 of section 93 of Title 39 of the Revised Statutes, as repealed and replaced by chapter 386 of the public laws of 1969, and as amended by chapter 319 of the public laws of 1971, is further amended by adding at the end a new sentence to read as follows:

This subsection shall apply to the investigation and determination of the existence of third party liability.

STATEMENT OF FACT

It is the purpose of this bill to clarify the manner of the distribution of proceeds received by an employee or its employer from a third person whose liability at law caused the compensable accident to the employee. This chapter establishes procedures and clarifies the manner of distribution of proceeds recovered to provide guidance and uniformity to the court or commission approving the distribution of such proceeds.