

## HOUSE BILL NO. HB0130

Worker's compensation-costs of recoveries.

Sponsored by: Representative(s) Ross, Nicholas and Simpson  
and Senator(s) Geis

A BILL

for

1 AN ACT relating to worker's compensation subrogation;  
2 requiring the state to contribute to attorney fees and  
3 costs of recovery; and providing for an effective date.

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5 *Be It Enacted by the Legislature of the State of Wyoming:*

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7 **Section 1.** W.S. 27-14-105(a) and (b) is amended to  
8 read:

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10 **27-14-105. Action against third party; notice;**  
11 **subrogation; legal representation; payment under**  
12 **reservation of rights; actions by department.**

13

14 (a) If an employee covered by this act receives an  
15 injury under circumstances creating a legal liability in  
16 some person other than the employer to pay damages, the

1 employee if engaged in work for his employer at the time of  
2 the injury is not deprived of any compensation to which he  
3 is entitled under this act. He may also pursue his remedy  
4 at law against the third party or the coemployee to the  
5 extent permitted by W.S. 27-14-104(a). Except as provided  
6 by subsections (b), (e) and (f) of this section, if the  
7 employee recovers from the third party or the coemployee in  
8 any manner including judgment, compromise, settlement or  
9 release, the state is entitled to be reimbursed for all  
10 payments made, or to be made, to or on behalf of the  
11 employee under this act but not to exceed one-third (1/3)  
12 of the total proceeds of the recovery without regard to the  
13 types of damages alleged in the third-party action. The  
14 state's reimbursement shall be reduced by its pro rata  
15 share of the reasonable costs and attorney fees incurred by  
16 the employee in obtaining the recovery against the third  
17 party. The state's portion of attorney fees shall be at  
18 the same rate agreed by the employee, not to exceed one-  
19 third (1/3) of the gross recovery. All money received by  
20 the state under this section shall be credited to the  
21 worker's compensation account and considered in computing  
22 the employer's experience rating.

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1           (b) The director and the attorney general shall be  
2 served by certified mail return receipt requested with a  
3 copy of the complaint filed in any suit initiated pursuant  
4 to subsection (a) of this section. Service of the  
5 complaint on the director and attorney general is a  
6 jurisdictional requirement in order to maintain the suit.  
7 The director and the attorney general shall be notified in  
8 writing by certified mail return receipt requested of any  
9 judgment, compromise, settlement or release entered into by  
10 an employee. Before offering settlement to an employee, a  
11 third party or its insurer shall notify the state of the  
12 proposed settlement and give the state fifteen (15) days  
13 after receipt of such notice in which to object. If notice  
14 of proposed settlement is not provided, the state is  
15 entitled to initiate an independent action against the  
16 third party or its insurer for all payments made to and any  
17 amount reserved for or on behalf of the employee under this  
18 act. If there is a settlement, compromise or release  
19 entered into by the parties in claims against a person  
20 other than the employer, the attorney general representing  
21 the director shall be made a party in all such negotiations  
22 for settlement, compromise or release. The attorney  
23 general and the director, for purposes of facilitating  
24 compromise and settlement, may in a proper case authorize

1 acceptance by the state of less than the state's claim for  
2 reimbursement. If an employee pursuant to the terms of a  
3 settlement agreement with the state under this subsection  
4 waives the right to any future benefits under this act, the  
5 state's pro rata share of attorney fees and costs shall be  
6 calculated by reference to both the cash reimbursement  
7 received by the state and the present value of future  
8 benefits waived by the employee. The proceeds of any  
9 judgment, settlement, compromise or release are encumbered  
10 by a continuing lien in favor of the state to the extent of  
11 the total amount of the state's claim for reimbursement  
12 under this section and for all current and future benefits  
13 under this act. The lien shall remain in effect until the  
14 state is paid the amount authorized under this section. In  
15 addition the person paying the settlement remains liable to  
16 the state for the state's claim unless the state through  
17 the attorney general signs the release prior to payment of  
18 an agreed settlement.  
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1           **Section 2.** This act is effective July 1, 2004, and  
2 applies to all subrogation payments to the state on or  
3 after that date regardless of the employee's date of  
4 injury.

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(END)