



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB2479

by Rep. Jay Hoffman

#### SYNOPSIS AS INTRODUCED:

820 ILCS 305/1.2 new	
820 ILCS 305/5	from Ch. 48, par. 138.5
820 ILCS 305/11	from Ch. 48, par. 138.11
820 ILCS 310/1.1 new	
820 ILCS 310/5	from Ch. 48, par. 172.40
820 ILCS 310/11	from Ch. 48, par. 172.46

Amends the Worker's Compensation Act and the Workers' Occupational Diseases Act. Provides that specified Sections limiting recovery do not apply to injuries or death resulting from an occupational disease as to which the recovery of compensation benefits under the Act would be precluded due to the operation of any period of repose or repose provision. Provides that, as to any such injury occupational disease, the employee, the employee's heirs, and any person having the standing under law to bring a civil action at law has the nonwaivable right to bring such an action against any employer or employers. Effective immediately.

LRB101 07913 JLS 52968 b

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Workers' Compensation Act is amended by  
5 changing Sections 5 and 11 and by adding Section 1.2 as  
6 follows:

7 (820 ILCS 305/1.2 new)

8 Sec. 1.2. Permitted civil actions. Subsection (a) of  
9 Section 5 and Section 11 do not apply to any injury or death  
10 sustained by an employee as to which the recovery of  
11 compensation benefits under this Act would be precluded due to  
12 the operation of any period of repose or repose provision. As  
13 to any such injury or death, the employee, the employee's  
14 heirs, and any person having standing under the law to bring a  
15 civil action at law, including an action for wrongful death and  
16 an action pursuant to Section 27-6 of the Probate Act of 1975,  
17 has the nonwaivable right to bring such an action against any  
18 employer or employers.

19 (820 ILCS 305/5) (from Ch. 48, par. 138.5)

20 Sec. 5. Damages; minors; third-party liability.

21 (a) Except as provided in Section 1.2, no ~~No~~ common law or  
22 statutory right to recover damages from the employer, his

1 insurer, his broker, any service organization that is wholly  
2 owned by the employer, his insurer or his broker and that  
3 provides safety service, advice or recommendations for the  
4 employer or the agents or employees of any of them for injury  
5 or death sustained by any employee while engaged in the line of  
6 his duty as such employee, other than the compensation herein  
7 provided, is available to any employee who is covered by the  
8 provisions of this Act, to any one wholly or partially  
9 dependent upon him, the legal representatives of his estate, or  
10 any one otherwise entitled to recover damages for such injury.

11 However, in any action now pending or hereafter begun to  
12 enforce a common law or statutory right to recover damages for  
13 negligently causing the injury or death of any employee it is  
14 not necessary to allege in the complaint that either the  
15 employee or the employer or both were not governed by the  
16 provisions of this Act or of any similar Act in force in this  
17 or any other State.

18 Any illegally employed minor or his legal representatives  
19 shall, except as hereinafter provided, have the right within 6  
20 months after the time of injury or death, or within 6 months  
21 after the appointment of a legal representative, whichever  
22 shall be later, to file with the Commission a rejection of his  
23 right to the benefits under this Act, in which case such  
24 illegally employed minor or his legal representatives shall  
25 have the right to pursue his or their common law or statutory  
26 remedies to recover damages for such injury or death.

1           No payment of compensation under this Act shall be made to  
2 an illegally employed minor, or his legal representatives,  
3 unless such payment and the waiver of his right to reject the  
4 benefits of this Act has first been approved by the Commission  
5 or any member thereof, and if such payment and the waiver of  
6 his right of rejection has been so approved such payment is a  
7 bar to a subsequent rejection of the provisions of this Act.

8           (b) Where the injury or death for which compensation is  
9 payable under this Act was caused under circumstances creating  
10 a legal liability for damages on the part of some person other  
11 than his employer to pay damages, then legal proceedings may be  
12 taken against such other person to recover damages  
13 notwithstanding such employer's payment of or liability to pay  
14 compensation under this Act. In such case, however, if the  
15 action against such other person is brought by the injured  
16 employee or his personal representative and judgment is  
17 obtained and paid, or settlement is made with such other  
18 person, either with or without suit, then from the amount  
19 received by such employee or personal representative there  
20 shall be paid to the employer the amount of compensation paid  
21 or to be paid by him to such employee or personal  
22 representative including amounts paid or to be paid pursuant to  
23 paragraph (a) of Section 8 of this Act.

24           Out of any reimbursement received by the employer pursuant  
25 to this Section the employer shall pay his pro rata share of  
26 all costs and reasonably necessary expenses in connection with

1 such third-party claim, action or suit and where the services  
2 of an attorney at law of the employee or dependents have  
3 resulted in or substantially contributed to the procurement by  
4 suit, settlement or otherwise of the proceeds out of which the  
5 employer is reimbursed, then, in the absence of other  
6 agreement, the employer shall pay such attorney 25% of the  
7 gross amount of such reimbursement.

8 If the injured employee or his personal representative  
9 agrees to receive compensation from the employer or accept from  
10 the employer any payment on account of such compensation, or to  
11 institute proceedings to recover the same, the employer may  
12 have or claim a lien upon any award, judgment or fund out of  
13 which such employee might be compensated from such third party.

14 In such actions brought by the employee or his personal  
15 representative, he shall forthwith notify his employer by  
16 personal service or registered mail, of such fact and of the  
17 name of the court in which the suit is brought, filing proof  
18 thereof in the action. The employer may, at any time thereafter  
19 join in the action upon his motion so that all orders of court  
20 after hearing and judgment shall be made for his protection. No  
21 release or settlement of claim for damages by reason of such  
22 injury or death, and no satisfaction of judgment in such  
23 proceedings shall be valid without the written consent of both  
24 employer and employee or his personal representative, except in  
25 the case of the employers, such consent is not required where  
26 the employer has been fully indemnified or protected by Court

1 order.

2 In the event the employee or his personal representative  
3 fails to institute a proceeding against such third person at  
4 any time prior to 3 months before such action would be barred,  
5 the employer may in his own name or in the name of the  
6 employee, or his personal representative, commence a  
7 proceeding against such other person for the recovery of  
8 damages on account of such injury or death to the employee, and  
9 out of any amount recovered the employer shall pay over to the  
10 injured employee or his personal representatives all sums  
11 collected from such other person by judgment or otherwise in  
12 excess of the amount of such compensation paid or to be paid  
13 under this Act, including amounts paid or to be paid pursuant  
14 to paragraph (a) of Section 8 of this Act, and costs,  
15 attorney's fees and reasonable expenses as may be incurred by  
16 such employer in making such collection or in enforcing such  
17 liability.

18 (Source: P.A. 98-633, eff. 6-5-14.)

19 (820 ILCS 305/11) (from Ch. 48, par. 138.11)

20 Sec. 11. Measure of responsibility. Except as provided in  
21 Section 1.2, the ~~The~~ compensation herein provided, together  
22 with the provisions of this Act, shall be the measure of the  
23 responsibility of any employer engaged in any of the  
24 enterprises or businesses enumerated in Section 3 of this Act,  
25 or of any employer who is not engaged in any such enterprises

1 or businesses, but who has elected to provide and pay  
2 compensation for accidental injuries sustained by any employee  
3 arising out of and in the course of the employment according to  
4 the provisions of this Act, and whose election to continue  
5 under this Act, has not been nullified by any action of his  
6 employees as provided for in this Act.

7 Accidental injuries incurred while participating in  
8 voluntary recreational programs including but not limited to  
9 athletic events, parties and picnics do not arise out of and in  
10 the course of the employment even though the employer pays some  
11 or all of the cost thereof. This exclusion shall not apply in  
12 the event that the injured employee was ordered or assigned by  
13 his employer to participate in the program.

14 Notwithstanding any other defense, accidental injuries  
15 incurred while the employee is engaged in the active commission  
16 of and as a proximate result of the active commission of (a) a  
17 forcible felony, (b) aggravated driving under the influence of  
18 alcohol, other drug or drugs, or intoxicating compound or  
19 compounds, or any combination thereof, or (c) reckless homicide  
20 and for which the employee was convicted do not arise out of  
21 and in the course of employment if the commission of that  
22 forcible felony, aggravated driving under the influence, or  
23 reckless homicide caused an accident resulting in the death or  
24 severe injury of another person. If an employee is acquitted of  
25 a forcible felony, aggravated driving under the influence, or  
26 reckless homicide that caused an accident resulting in the

1 death or severe injury of another person or if these charges  
2 are dismissed, there shall be no presumption that the employee  
3 is eligible for benefits under this Act. No employee shall be  
4 entitled to additional compensation under Sections 19(k) or  
5 19(l) of this Act or attorney's fees under Section 16 of this  
6 Act when the employee has been charged with a forcible felony,  
7 aggravated driving under the influence, or reckless homicide  
8 that caused an accident resulting in the death or severe injury  
9 of another person and the employer terminates benefits or  
10 refuses to pay benefits to the employee until the termination  
11 of any pending criminal proceedings.

12 Accidental injuries incurred while participating as a  
13 patient in a drug or alcohol rehabilitation program do not  
14 arise out of and in the course of employment even though the  
15 employer pays some or all of the costs thereof.

16 Any injury to or disease or death of an employee arising  
17 from the administration of a vaccine, including without  
18 limitation smallpox vaccine, to prepare for, or as a response  
19 to, a threatened or potential bioterrorist incident to the  
20 employee as part of a voluntary inoculation program in  
21 connection with the person's employment or in connection with  
22 any governmental program or recommendation for the inoculation  
23 of workers in the employee's occupation, geographical area, or  
24 other category that includes the employee is deemed to arise  
25 out of and in the course of the employment for all purposes  
26 under this Act. This paragraph added by this amendatory Act of



1 the 93rd General Assembly is declarative of existing law and is  
2 not a new enactment.

3 No compensation shall be payable if (i) the employee's  
4 intoxication is the proximate cause of the employee's  
5 accidental injury or (ii) at the time the employee incurred the  
6 accidental injury, the employee was so intoxicated that the  
7 intoxication constituted a departure from the employment.  
8 Admissible evidence of the concentration of (1) alcohol, (2)  
9 cannabis as defined in the Cannabis Control Act, (3) a  
10 controlled substance listed in the Illinois Controlled  
11 Substances Act, or (4) an intoxicating compound listed in the  
12 Use of Intoxicating Compounds Act in the employee's blood,  
13 breath, or urine at the time the employee incurred the  
14 accidental injury shall be considered in any hearing under this  
15 Act to determine whether the employee was intoxicated at the  
16 time the employee incurred the accidental injuries. If at the  
17 time of the accidental injuries, there was 0.08% or more by  
18 weight of alcohol in the employee's blood, breath, or urine or  
19 if there is any evidence of impairment due to the unlawful or  
20 unauthorized use of (1) cannabis as defined in the Cannabis  
21 Control Act, (2) a controlled substance listed in the Illinois  
22 Controlled Substances Act, or (3) an intoxicating compound  
23 listed in the Use of Intoxicating Compounds Act or if the  
24 employee refuses to submit to testing of blood, breath, or  
25 urine, then there shall be a rebuttable presumption that the  
26 employee was intoxicated and that the intoxication was the

1 proximate cause of the employee's injury. The employee may  
2 overcome the rebuttable presumption by the preponderance of the  
3 admissible evidence that the intoxication was not the sole  
4 proximate cause or proximate cause of the accidental injuries.  
5 Percentage by weight of alcohol in the blood shall be based on  
6 grams of alcohol per 100 milliliters of blood. Percentage by  
7 weight of alcohol in the breath shall be based upon grams of  
8 alcohol per 210 liters of breath. Any testing that has not been  
9 performed by an accredited or certified testing laboratory  
10 shall not be admissible in any hearing under this Act to  
11 determine whether the employee was intoxicated at the time the  
12 employee incurred the accidental injury.

13 All sample collection and testing for alcohol and drugs  
14 under this Section shall be performed in accordance with rules  
15 to be adopted by the Commission. These rules shall ensure:

16 (1) compliance with the National Labor Relations Act  
17 regarding collective bargaining agreements or regulations  
18 promulgated by the United States Department of  
19 Transportation;

20 (2) that samples are collected and tested in  
21 conformance with national and State legal and regulatory  
22 standards for the privacy of the individual being tested,  
23 and in a manner reasonably calculated to prevent  
24 substitutions or interference with the collection or  
25 testing of reliable sample;

26 (3) that split testing procedures are utilized;

1 (4) that sample collection is documented, and the  
2 documentation procedures include:

3 (A) the labeling of samples in a manner so as to  
4 reasonably preclude the probability of erroneous  
5 identification of test result; and

6 (B) an opportunity for the employee to provide  
7 notification of any information which he or she  
8 considers relevant to the test, including  
9 identification of currently or recently used  
10 prescription or nonprescription drugs and other  
11 relevant medical information;

12 (5) that sample collection, storage, and  
13 transportation to the place of testing is performed in a  
14 manner so as to reasonably preclude the probability of  
15 sample contamination or adulteration; and

16 (6) that chemical analyses of blood, urine, breath, or  
17 other bodily substance are performed according to  
18 nationally scientifically accepted analytical methods and  
19 procedures.

20 The changes to this Section made by Public Act 97-18 apply  
21 only to accidental injuries that occur on or after September 1,  
22 2011.

23 (Source: P.A. 97-18, eff. 6-28-11; 97-276, eff. 8-8-11; 97-813,  
24 eff. 7-13-12.)

25 Section 10. The Workers' Occupational Diseases Act is

1 amended by changing Sections 5 and 11 and by adding Section 1.1  
2 as follows:

3 (820 ILCS 310/1.1 new)

4 Sec. 1.1. Permitted civil actions. Subsection (a) of  
5 Section 5 and Section 11 do not apply to any injury or death  
6 resulting from an occupational disease as to which the recovery  
7 of compensation benefits under this Act would be precluded due  
8 to the operation of any period of repose or repose provision.  
9 As to any such occupational disease, the employee, the  
10 employee's heirs, and any person having standing under the law  
11 to bring a civil action at law, including an action for  
12 wrongful death and an action pursuant to Section 27-6 of the  
13 Probate Act of 1975, has the nonwaivable right to bring such an  
14 action against any employer or employers.

15 (820 ILCS 310/5) (from Ch. 48, par. 172.40)

16 (Text of Section WITHOUT the changes made by P.A. 89-7,  
17 which has been held unconstitutional)

18 Sec. 5. Liability inclusive; third-party liability.

19 (a) Except as provided in Section 1.1, there ~~There~~ is no  
20 common law or statutory right to recover compensation or  
21 damages from the employer, his insurer, his broker, any service  
22 organization retained by the employer, his insurer or his  
23 broker to provide safety service, advice or recommendations for  
24 the employer or the agents or employees of any of them for or

1 on account of any injury to health, disease, or death  
2 therefrom, other than for the compensation herein provided or  
3 for damages as provided in Section 3 of this Act. This Section  
4 shall not affect any right to compensation under the "Workers'  
5 Compensation Act".

6 No compensation is payable under this Act for any condition  
7 of physical or mental ill-being, disability, disablement, or  
8 death for which compensation is recoverable on account of  
9 accidental injury under the "Workers' Compensation Act".

10 (b) Where the disablement or death for which compensation  
11 is payable under this Act was caused under circumstances  
12 creating a legal liability for damages on the part of some  
13 person other than his employer to pay damages, then legal  
14 proceedings may be taken against such other person to recover  
15 damages notwithstanding such employer's payment of or  
16 liability to pay compensation under this Act. In such case,  
17 however, if the action against such other person is brought by  
18 the employee with a disability or his personal representative  
19 and judgment is obtained and paid or settlement is made with  
20 such other person, either with or without suit, then from the  
21 amount received by such employee or personal representative  
22 there shall be paid to the employer the amount of compensation  
23 paid or to be paid by him to such employee or personal  
24 representative, including amounts paid or to be paid pursuant  
25 to paragraph (a) of Section 8 of this Act.

26 Out of any reimbursement received by the employer, pursuant

1 to this Section the employer shall pay his pro rata share of  
2 all costs and reasonably necessary expenses in connection with  
3 such third party claim, action or suit, and where the services  
4 of an attorney at law of the employee or dependents have  
5 resulted in or substantially contributed to the procurement by  
6 suit, settlement or otherwise of the proceeds out of which the  
7 employer is reimbursed, then, in the absence of other  
8 agreement, the employer shall pay such attorney 25% of the  
9 gross amount of such reimbursement.

10 If the employee with a disability or his personal  
11 representative agrees to receive compensation from the  
12 employer or accept from the employer any payment on account of  
13 such compensation, or to institute proceedings to recover the  
14 same, the employer may have or claim a lien upon any award,  
15 judgment or fund out of which such employee might be  
16 compensated from such third party.

17 In such actions brought by the employee or his personal  
18 representative, he shall forthwith notify his employer by  
19 personal service or registered mail, of such fact and of the  
20 name of the court in which the suit is brought, filing proof  
21 thereof in the action. The employer may, at any time thereafter  
22 join in the action upon his motion so that all orders of court  
23 after hearing and judgment shall be made for his protection. No  
24 release or settlement of claim for damages by reason of such  
25 disability or death, and no satisfaction of judgment in such  
26 proceedings, are valid without the written consent of both

1 employer and employee or his personal representative, except in  
2 the case of the employers, such consent is not required where  
3 the employer has been fully indemnified or protected by court  
4 order.

5 In the event the employee or his personal representative  
6 fails to institute a proceeding against such third person at  
7 any time prior to 3 months before such action would be barred  
8 at law the employer may in his own name, or in the name of the  
9 employee or his personal representative, commence a proceeding  
10 against such other person for the recovery of damages on  
11 account of such disability or death to the employee, and out of  
12 any amount recovered the employer shall pay over to the injured  
13 employee or his personal representative all sums collected from  
14 such other person by judgment or otherwise in excess of the  
15 amount of such compensation paid or to be paid under this Act,  
16 including amounts paid or to be paid pursuant to paragraph (a)  
17 of Section 8 of this Act, and costs, attorney's fees and  
18 reasonable expenses as may be incurred by such employer in  
19 making such collection or in enforcing such liability.

20 (Source: P.A. 99-143, eff. 7-27-15.)

21 (820 ILCS 310/11) (from Ch. 48, par. 172.46)

22 Sec. 11. Measure of liability. Except as provided in  
23 Section 1.1, the ~~The~~ compensation herein provided for shall be  
24 the full, complete and only measure of the liability of the  
25 employer bound by election under this Act and such employer's

1 liability for compensation and medical benefits under this Act  
2 shall be exclusive and in place of any and all other civil  
3 liability whatsoever, at common law or otherwise, to any  
4 employee or his legal representative on account of damage,  
5 disability or death caused or contributed to by any disease  
6 contracted or sustained in the course of the employment.

7 (Source: Laws 1951, p. 1095.)

8 Section 99. Effective date. This Act takes effect upon  
9 becoming law.