

HB3697



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3697

Introduced 2/22/2021, by Rep. Jay Hoffman

SYNOPSIS AS INTRODUCED:

820 ILCS 305/5

from Ch. 48, par. 138.5

Amends the Workers' Compensation Act. Provides the Workers' Compensation Act does not preempt or prevent an employee from recovering under the Biometric Information Privacy Act.

LRB102 14748 JLS 20101 b

A BILL FOR

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 Section 5 as follows:

6 (820 ILCS 305/5) (from Ch. 48, par. 138.5)

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

8 (a) Except as provided in Section 1.2, no common law or
9 statutory right to recover damages from the employer, his
10 insurer, his broker, any service organization that is wholly
11 owned by the employer, his insurer or his broker and that
12 provides safety service, advice or recommendations for the
13 employer or the agents or employees of any of them for injury
14 or death sustained by any employee while engaged in the line of
15 his duty as such employee, other than the compensation herein
16 provided, is available to any employee who is covered by the
17 provisions of this Act, to any one wholly or partially
18 dependent upon him, the legal representatives of his estate,
19 or any one otherwise entitled to recover damages for such
20 injury.

21 However, in any action now pending or hereafter begun to
22 enforce a common law or statutory right to recover damages for
23 negligently causing the injury or death of any employee it is

1 not necessary to allege in the complaint that either the
2 employee or the employer or both were not governed by the
3 provisions of this Act or of any similar Act in force in this
4 or any other State.

5 Moreover, nothing in this Act limits, prevents, or
6 preempts a recovery by an employee under the Biometric
7 Information Privacy Act.

8 Any illegally employed minor or his legal representatives
9 shall, except as hereinafter provided, have the right within 6
10 months after the time of injury or death, or within 6 months
11 after the appointment of a legal representative, whichever
12 shall be later, to file with the Commission a rejection of his
13 right to the benefits under this Act, in which case such
14 illegally employed minor or his legal representatives shall
15 have the right to pursue his or their common law or statutory
16 remedies to recover damages for such injury or death.

17 No payment of compensation under this Act shall be made to
18 an illegally employed minor, or his legal representatives,
19 unless such payment and the waiver of his right to reject the
20 benefits of this Act has first been approved by the Commission
21 or any member thereof, and if such payment and the waiver of
22 his right of rejection has been so approved such payment is a
23 bar to a subsequent rejection of the provisions of this Act.

24 (b) Where the injury or death for which compensation is
25 payable under this Act was caused under circumstances creating
26 a legal liability for damages on the part of some person other

1 than his employer to pay damages, then legal proceedings may
2 be taken against such other person to recover damages
3 notwithstanding such employer's payment of or liability to pay
4 compensation under this Act. In such case, however, if the
5 action against such other person is brought by the injured
6 employee or his personal representative and judgment is
7 obtained and paid, or settlement is made with such other
8 person, either with or without suit, then from the amount
9 received by such employee or personal representative there
10 shall be paid to the employer the amount of compensation paid
11 or to be paid by him to such employee or personal
12 representative including amounts paid or to be paid pursuant
13 to paragraph (a) of Section 8 of this Act.

14 Out of any reimbursement received by the employer pursuant
15 to this Section the employer shall pay his pro rata share of
16 all costs and reasonably necessary expenses in connection with
17 such third-party claim, action or suit and where the services
18 of an attorney at law of the employee or dependents have
19 resulted in or substantially contributed to the procurement by
20 suit, settlement or otherwise of the proceeds out of which the
21 employer is reimbursed, then, in the absence of other
22 agreement, the employer shall pay such attorney 25% of the
23 gross amount of such reimbursement.

24 If the injured employee or his personal representative
25 agrees to receive compensation from the employer or accept
26 from the employer any payment on account of such compensation,

1 or to institute proceedings to recover the same, the employer
2 may have or claim a lien upon any award, judgment or fund out
3 of which such employee might be compensated from such third
4 party.

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

19 In the event the employee or his personal representative
20 fails to institute a proceeding against such third person at
21 any time prior to 3 months before such action would be barred,
22 the employer may in his own name or in the name of the
23 employee, or his personal representative, commence a
24 proceeding against such other person for the recovery of
25 damages on account of such injury or death to the employee, and
26 out of any amount recovered the employer shall pay over to the

1 injured employee or his personal representatives all sums
2 collected from such other person by judgment or otherwise in
3 excess of the amount of such compensation paid or to be paid
4 under this Act, including amounts paid or to be paid pursuant
5 to paragraph (a) of Section 8 of this Act, and costs,
6 attorney's fees and reasonable expenses as may be incurred by
7 such employer in making such collection or in enforcing such
8 liability.

9 (Source: P.A. 101-6, eff. 5-17-19.)