

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

As Engrossed: H3/20/13 H3/27/13

# A Bill

HOUSE BILL 2107

5 By: Representative S. Malone  
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## For An Act To Be Entitled

8 AN ACT TO AMEND THE WORKERS' COMPENSATION LAW ENACTED  
9 BY INITIATED ACT 4 OF 1948; TO REVISE THIRD-PARTY  
10 LIABILITY IN THE WORKERS' COMPENSATION LAW; AND FOR  
11 OTHER PURPOSES.  
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### Subtitle

14 TO AMEND THE WORKERS' COMPENSATION LAW  
15 ENACTED BY INITIATED ACT 4 OF 1948 AND TO  
16 REVISE THIRD-PARTY LIABILITY IN THE  
17 WORKERS' COMPENSATION LAW.  
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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23 *SECTION 1. Arkansas Code § 11-9-410(a)(2)(D), concerning the rights of*  
24 *an employer in the recovery by an injured employee against a third party, is*  
25 *amended to read as follows:*

26 *(D)(i) Any ~~excess~~ amount of a settlement or judgment*  
27 *remaining after the employer or the carrier has been reimbursed the amount*  
28 *paid in workers' compensation benefits arising from an injury or death shall*  
29 *belong to the injured employee or his or her dependents.*

30 *(ii) An employer or carrier is entitled to a future*  
31 *credit in the claim for workers' compensation benefits in the amount paid to*  
32 *or on behalf of the injured or deceased employee or his or her dependents*  
33 *from the settlement or judgment in this subdivision (a)(2).*

34 *(iii) An employer or carrier is not required to pay*  
35 *additional workers' compensation benefits for the injuries or death arising*  
36 *from an incident involving a third party until the future credit is*



1 exhausted.

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3 SECTION 2. Arkansas Code § 11-9-410(b)(2), concerning subrogation in a  
4 third-party claim, is amended to read as follows:

5 (2) After reasonable notice and opportunity to be represented in  
6 the action has been given to the compensation beneficiary, the liability of  
7 the third party to the compensation beneficiary, to the employer, and to the  
8 carrier shall be determined in the action, as well as the third party's  
9 liability to the employer and carrier.

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11 SECTION 3. Arkansas Code § 11-9-410(b)(3)(A), concerning recovery  
12 amounts from a third-party liability action, is amended to read as follows:

13 (3)(A) After recovery shall be had against the third  
14 party, by suit or otherwise, the compensation beneficiary ~~shall be~~ is  
15 entitled to any amount recovered over and above the amount that the employer  
16 and carrier have paid or are liable for in compensation, after deducting  
17 reasonable costs of collection except that:

18 (i) An employer or carrier is entitled to a future  
19 credit in a claim for workers' compensation benefits in the amount of a  
20 settlement or judgment to be paid to or on behalf of the injured or deceased  
21 employee or his or her dependents from a third party after the employer or  
22 carrier has been reimbursed the amount paid to or on behalf of the injured or  
23 deceased employee or his or her dependents; and

24 (ii) An employer or carrier is not required to pay  
25 additional workers' compensation benefits for the injuries or death arising  
26 from an incident involving a third party until the future credit is  
27 exhausted.

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29 SECTION 4. Arkansas Code § 11-9-410, concerning third-party liability,  
30 is amended to add additional subsections to read as follows:

31 (d) Waiver or Abrogation of Subrogation.

32 (1) The right of an employer or carrier to recover in an action  
33 in tort from a third party that caused the injury or death of an employee is  
34 absolute and may only be waived with the written consent of the employer or  
35 carrier.

36 (2) The written consent of the employer of an injured employee

1 or the carrier of the employer is required in any settlement of an action in  
2 tort against a third party outside of this section.

3 (e) The purpose and intent of this section is to prevent any double  
4 recovery to the injured employee.

5 (f) In considering the entitlement of an employer or carrier to an  
6 absolute lien in any third party claim, the commission or court shall not  
7 consider the "made whole doctrine" or whether the claimant has been made  
8 whole by the settlement proceeds.

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12 /s/S. Malone  
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