

HB 169 – AS INTRODUCED

2013 SESSION

13-0138
01/09

HOUSE BILL **169**

AN ACT establishing an employers' private right of action to enforce the payment of workers' compensation coverage.

SPONSORS: Rep. Weed, Ches 16

COMMITTEE: Labor, Industrial and Rehabilitative Services

ANALYSIS

This bill establishes procedures for a private right of action to recover workers' compensation coverage payments.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT establishing an employers' private right of action to enforce the payment of workers' compensation coverage.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Section; Private Right of Action to Recover Workers' Compensation Coverage Payments.

2 Amend RSA 281-A by inserting after section 5-f the following new section:

3 281-A:5-g Employers' Private Report of Action to Enforce Payment of Workers' Compensation
4 Coverage Premiums.

5 I. Any employer may file in superior court a civil action against any other employer engaged
6 in generally the same trade, business, occupation, field, or industry to recover amounts that should
7 have been paid as premiums by the defending employer pursuant to this chapter to provide workers'
8 compensation coverage to the defending employer's employees who engaged in employment in
9 New Hampshire.

10 II. Within 20 days of filing a civil action under this section, the plaintiff employer shall serve
11 a copy of the writ on the insurance carrier, if any, that was or is at the time of entry of the writ
12 entitled to collect amounts not paid and sought by way of the action. Any insurer that fails to
13 intervene or seek arbitration against the defending employer within 60 days of notice of the writ to
14 recover or collect amounts sought in the action and which would have been owed to the insurer from
15 a defendant in such action shall be prohibited from attempting to recover or collect such amounts
16 sought in the action which the insurer failed to seek to recover or collect, unless the insurer obtains
17 the written and voluntary consent of the plaintiff that has initiated the suit under this section.
18 When the plaintiff employer provides such written and voluntary consent, a court may substitute the
19 insurer as the plaintiff. When the insurer is substituted as the plaintiff, then the case shall proceed
20 without further regard to this section, except as provided in paragraph III, and any award in favor of
21 the insurer, if any, shall be the property of such insurer. If the insurer intervenes or seeks
22 arbitration to collect amounts sought in the action, then the court may, upon motion, stay the action
23 as to the plaintiff employer, pending the adjudication of the insurer's claims, after which the court
24 may act in its discretion. The insurer shall notify the court of any decision or award within 20 days
25 of the same.

26 III. No settlement made between any insured and any insurer shall be deemed to prohibit or
27 limit an action under this section to recover other amounts that should have been paid to cover
28 employees under this chapter and which the insurer did not recover by such settlement or otherwise.
29 The parties to any settlement or arbitration award shall upon demand and without condition fully

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1 disclose any settlement or arbitration award to the original plaintiff employer that filed the original
2 civil action.

3 IV. Unless the insurer has been substituted in the action, all amounts recovered by the
4 plaintiff employer, except an award of attorney's fees and costs if any, shall be forwarded to the state
5 treasurer for deposit into the general fund.

6 V. Nothing contained in this section shall be deemed as limiting or prohibiting any political
7 subdivision, public entity, office, division, commission, commissioner, director, attorney general, or
8 law enforcement agency, entitled to bring any action, criminal or civil, against a defendant to an
9 action under this section from proceeding against such defendant in any appropriate forum. The
10 forum, court, or agency, however, may consider and offset the amounts recovered, or likely
11 recoverable, by an action pursuant to this section in imposing a verdict or judgment, or deciding
12 against imposing a fine or other penalty.

13 VI. This section shall not affect or apply to insurance contracts that were made before the
14 effective date of this section. In addition, any action filed under this section may be filed only after
15 90 days following the expiration of the then-present term of the workers' compensation policy
16 affected by the action, if one existed.

17 2 Effective Date. This act shall take effect January 1, 2014.