



General Assembly

February Session, 2000

Raised Bill No. 5166

LCO No. 954

Referred to Committee on Labor and Public Employees

Introduced by:
(LAB)

An Act Concerning Credit To Injured Employees.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 31-293 of the general statutes is repealed and the following
2 is substituted in lieu thereof:

3 (a) (1) When any injury for which compensation is payable under
4 the provisions of this chapter has been sustained under circumstances
5 creating in a person other than an employer who has complied with
6 the requirements of subsection (b) of section 31-284, a legal liability to
7 pay damages for the injury, the injured employee may claim
8 compensation under the provisions of this chapter, but the payment or
9 award of compensation shall not affect the claim or right of action of
10 the injured employee against such person, but the injured employee
11 may proceed at law against such person to recover damages for the
12 injury; and any employer or the custodian of the Second Injury Fund,
13 having paid, or having become obligated to pay, compensation under
14 the provisions of this chapter [may bring an action against such person
15 to recover any amount that he has paid or has become obligated to pay
16 as compensation to the injured employee] shall have a lien upon any
17 settlement received by the employee from such person or any

18 judgment received by the employee against such person to the extent
19 permitted by this section.

20 (2) If the employee [, the employer or the custodian of the Second
21 Injury Fund] brings an action against such person, [he] the employee
22 shall immediately notify the [others] employer or the custodian of the
23 Second Injury Fund, as the case may be, in writing, by personal
24 presentation or by registered or certified mail, of the action and of the
25 name of the court to which the [writ] action is returnable. [, and the
26 others may join as parties plaintiff in the action within thirty days after
27 such notification, and, if the others fail to join as parties plaintiff, their
28 right of action against such person shall abate. In any case in which an
29 employee brings an action against a party other than an employer who
30 failed to comply with the requirements of subsection (b) of section 31-
31 284, in accordance with the provisions of this section, and the
32 employer is a party defendant in the action, the employer may join as a
33 party plaintiff in the action.] The bringing of any action against an
34 employer shall not constitute notice to the employer within the
35 meaning of this [section] subdivision.

36 (3) If the [employer and the] employee [join as parties plaintiff in the
37 action] commences an action against such person and any damages are
38 recovered, the damages shall be so apportioned that the claim of the
39 employer, as defined in subdivision (5) of this section, shall take
40 precedence over that of the injured employee in the proceeds of the
41 recovery, after the deduction of reasonable and necessary
42 expenditures, including attorneys' fees, incurred by the employee in
43 effecting the recovery. The rendition of a judgment or effectuation of a
44 settlement in favor of the employee [or the employer] against the party
45 shall not terminate the employer's obligation to make further
46 compensation [which] that the commissioner thereafter deems payable
47 to the injured employee. If the [damages] amount of the judgment or
48 settlement, after deducting the employee's [expenses as provided in
49 this subsection] reasonable and necessary expenditures for effecting
50 the recovery, including attorneys' fees, are more than sufficient to

51 reimburse the employer, damages shall be assessed in [his] the
52 employer's favor in a sum sufficient to reimburse [him] the employer
53 for [his claim, and the excess shall be assessed in favor of the injured
54 employee] all compensation paid by the employer to the employee up
55 to the effective date of the judgment or settlement, reduced by the
56 ratio, expressed as a percentage, that the employee's reasonable and
57 necessary expenditures, including attorneys' fees, in effecting such
58 recovery bears to the total settlement. If the amount of the judgment or
59 settlement, after the deduction of reasonable and necessary
60 expenditures, including attorneys' fees, incurred by the employee in
61 effecting the recovery, is not sufficient to reimburse the employer for
62 all compensation paid by the employer to the employee up to the
63 effective date of the judgment or settlement, damages shall be assessed
64 in the employer's favor in an amount equal to fifty per cent of the
65 amount of the judgment or settlement, less the employee's reasonable
66 and necessary expenditures, including attorneys' fees, and the excess
67 shall be assessed in favor of the employee. To the extent that the
68 employer receives payment of its lien, the amount so received and any
69 reduction in said lien as authorized under this subdivision, shall not be
70 considered a collateral source payment in any other proceeding or
71 claim arising out of the claim of the employee.

72 (4) No compromise with the person by either the employer or the
73 employee shall be binding upon or affect the rights of the other, unless
74 assented to by [him] such other, except that in the case of a settlement
75 of a pending lawsuit, consent shall not be required if a judge of the
76 court before whom the case is pending makes a finding that the
77 amount of the settlement is fair and reasonable under the
78 circumstances.

79 (5) For the purposes of this section, the claim of the employer shall
80 consist of [(1)] the amount of any compensation [which he] the
81 employer has paid on account of the injury [which] that is the subject
82 of the suit, [and (2) an amount equal to the present worth of any
83 probable future payments which he has by award become obligated to

84 pay on account of the injury] together with any further payments due
85 to the employee up to the effective date of the judgment or settlement.
86 The word "compensation", as used in this section, shall be construed to
87 include incapacity payments to an injured employee, payments to the
88 dependents of a deceased employee, sums paid out for surgical,
89 medical and hospital services to an injured employee, the burial fee
90 provided by subdivision (1) of subsection (a) of section 31-306,
91 payments made under the provisions of sections 31-312 and 31-313,
92 and payments made under the provisions of section 31-284b in the case
93 of an action brought under this section by the employer or an action
94 brought under this section by the employee in which the employee has
95 alleged and been awarded such payments as damages.

96 (6) Each employee who brings an action against a party in
97 accordance with the provisions of this subsection shall include [in his]
98 as a separate page of the employee's complaint (A) the amount of any
99 compensation paid by the employer or the Second Injury Fund on
100 account of the injury which is the subject of the suit and (B) the amount
101 equal to the present worth of any probable future payments [which]
102 that the employer or the Second Injury Fund has, by award, become
103 obligated to pay on account of the injury, if known. The page of the
104 complaint setting forth compensation paid and payable by the
105 employer shall not be submitted to the jury and shall not be referred to
106 in any way in proceedings before the jury.

107 (7) Notwithstanding the provisions of this subsection, when any
108 injury for which compensation is payable under the provisions of this
109 chapter has been sustained under circumstances creating in a person
110 other than an employer who has complied with the requirements of
111 subsection (b) of section 31-284, a legal liability to pay damages for the
112 injury and the injured employee has received compensation for the
113 injury from such employer, its workers' compensation insurance
114 carrier or the Second Injury Fund pursuant to the provisions of this
115 chapter, the employer, insurance carrier or Second Injury Fund shall
116 have a lien upon any judgment received by the employee against the

117 party or any settlement received by the employee from the party in the
118 net amount as determined under subdivision (3) of this section,
119 provided the employer, insurance carrier or Second Injury Fund shall
120 give written notice of the lien to the party prior to such judgment or
121 settlement.

122 (b) In the event the employee has not commenced any proceedings
123 against a responsible third party prior to ninety days before the
124 expiration of the limitation of action period for said claim, the
125 employer may commence such proceedings against the responsible
126 third party to recover all sums paid or payable to the employee,
127 provided the employer shall not have the right to commence such
128 action, unless the employer has first notified the employee, in writing,
129 of the employer's intent to commence such an action. The employer
130 shall give said notice to the employee not less than sixty days prior to
131 the expiration of the limitation of action period. The employee shall
132 have the right to commence an action as provided in this section
133 within thirty days of the receipt of said notice. If the employee fails to
134 commence an action within said thirty-day period and gives notice of
135 same to the employer, as provided hereunder, the employer shall have
136 the right to commence said action for payments made or payable by
137 the employer to the employee. If the employer is authorized to
138 commence an action, the employee may join in said action, in which
139 case the claims of the employer and employee shall be identical to the
140 procedures stated herein for a claim initially brought by the employee.

141 [(b)] (c) When an injury for which compensation is payable under
142 the provisions of this chapter is determined to be the result of a motor
143 vehicle accident or other accident or circumstance in which a third
144 person other than the employer was negligent and the claim is
145 subrogated by the employer or its workers' compensation insurance
146 carrier, the insurance carrier shall provide a rate adjustment to the
147 employer's workers' compensation policy to reflect the recovery of any
148 compensation paid by the insurance carrier prior to subrogation.

149 [(c)] (d) Notwithstanding the provisions of subsection (a) of this
150 section, no construction design professional who is retained to perform
151 professional services on a construction project, or any employee of a
152 construction design professional who is assisting or representing the
153 construction design professional in the performance of professional
154 services on the site of the construction project, shall be liable for any
155 injury on the construction project for which compensation is payable
156 under the provisions of this chapter, unless responsibility for safety
157 practices is specifically assumed by contract. The immunity provided
158 by this subsection to any construction design professional shall not
159 apply to the negligent preparation of design plans or specifications.
160 For the purposes of this subsection "construction design professional"
161 means (1) any person licensed as an architect under the provisions of
162 chapter 390, (2) any person licensed, or exempted from licensure, as an
163 engineer under the provisions of chapter 391, or (3) any corporation
164 organized to render professional services through the practice of either
165 or both of such professions in this state.

166 [(d)] (e) Notwithstanding the provisions of subsection (a) of this
167 section, the furnishing of or the failure to furnish safety inspections or
168 safety advisory services (1) by an insurer incident to providing
169 workers' compensation insurance to an employer, (2) pursuant to a
170 contract providing for safety inspections or safety advisory services
171 between an employer and a self-insurance service organization
172 incident to providing workers' compensation related services or (3) by
173 a union representing employees of the employer, shall not subject the
174 insurer or self-insurance service organization or their agents or
175 employees, or the union, its members or the members of its safety
176 committee, to third party liability for damages for injury, death or loss
177 resulting therefrom unless the liability arises from a breach of a duty of
178 fair representation of its members by a union. The immunity from
179 liability extended under this subsection shall not be extended to any
180 insurer or self-insurance service organization other than where the
181 immunity is incident to the provision of workers' compensation
182 insurance or workers' compensation related services.

Statement of Purpose:

To credit employees for the employer's fair and proportionate share of attorneys' fees and other expenses incurred in connection with the procurement of a monetary settlement or judgment against third party claims, to expedite settlements of third party lawsuits and to eliminate the need for additional claims to be asserted by an employer.