



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1 Section 31-293 of the general statutes is repealed and the following  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.

**LAB Committee Vote:** Yea 8 Nay 4 JF C/R APP