



House of Representatives

General Assembly

File No. 307

January Session, 2001

Substitute House Bill No. 6884

House of Representatives, April 17, 2001

The Committee on Labor and Public Employees reported through REP. DONOVAN of the 84th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT ESTABLISHING A STATUTE OF LIMITATIONS ON MAKING A CLAIM AGAINST THE SECOND INJURY FUND FOR REIMBURSEMENT.

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

1 Section 1. Subdivision (2) of subsection (a) of section 31-306 of the
2 general statutes is repealed and the following is substituted in lieu
3 thereof:

4 (2) To those wholly dependent upon the deceased employee at the
5 date of [his] injury, a weekly compensation equal to seventy-five per
6 cent of the average weekly earnings of the deceased calculated
7 pursuant to section 31-310, as amended by this act, after such earnings
8 have been reduced by any deduction for federal or state taxes, or both,
9 and for the federal Insurance Contributions Act made from such
10 employee's total wages received during the period of calculation of the
11 employee's average weekly wage pursuant to said section 31-310, as of
12 the date of the injury but not more than the maximum weekly

13 compensation rate set forth in section 31-309 for the year in which the
14 injury occurred or less than twenty dollars weekly. (A) The weekly
15 compensation rate of each dependent entitled to receive compensation
16 under this section as a result of death arising from a compensable
17 injury occurring on or after October 1, 1977, shall be adjusted annually
18 as provided in this subdivision as of the following October first, and
19 each subsequent October first, to provide the dependent with a cost-of-
20 living adjustment in [his] the dependent's weekly compensation rate as
21 determined as of the date of the injury under section 31-309. If the
22 maximum weekly compensation rate, as determined under the
23 provisions of said section 31-309, to be effective as of any October first
24 following the date of the injury, is greater than the maximum weekly
25 compensation rate prevailing at the date of the injury, the weekly
26 compensation rate [which] that the injured employee was entitled to
27 receive at the date of the injury or October 1, 1990, whichever is later,
28 shall be increased by the percentage of the increase in the maximum
29 weekly compensation rate required by the provisions of said section
30 31-309 from the date of the injury or October 1, 1990, whichever is
31 later, to such October first. The cost-of-living increases provided under
32 this subdivision shall be paid by the employer without any order or
33 award from the commissioner. The adjustments shall apply to each
34 payment made in the next succeeding twelve-month period
35 commencing with the October first next succeeding the date of the
36 injury. With respect to any dependent receiving benefits on October 1,
37 1997, with respect to any injury occurring on or after July 1, 1993, and
38 before October 1, 1997, such benefit shall be recalculated to October 1,
39 1997, as if such benefits had been subject to recalculation annually
40 under this subparagraph. The difference between the amount of any
41 benefits [which] that would have been paid to such dependent if such
42 benefits had been subject to such recalculation and the actual amount
43 of benefits paid during the period between such injury and such
44 recalculation shall be paid to the dependent not later than December 1,
45 1997, in a lump-sum payment. The employer or [his] its insurer shall

46 be reimbursed by the Second Injury Fund, as provided in section 31-
47 354, for adjustments, including lump-sum payments, payable under
48 this subparagraph for deaths from compensable injuries occurring on
49 or after July 1, 1993, and before October 1, 1997, [upon presentation of]
50 provided (i) for claims filed on or after the effective date of this act, the
51 employer or its insurer notifies the custodian of the fund by certified
52 mail no later than one calendar year after the date the claim is initially
53 filed or, in the case of a contested claim, no later than one year after the
54 finding of compensability, and provided further, the employer or its
55 insurer presents any vouchers and information that the Treasurer shall
56 require, and (ii) for claims filed prior to the effective date of this act,
57 the employer or its insurer notifies the custodian of the fund by
58 certified mail no later than one calendar year from the effective date of
59 this act, and provided further, the employer or its insurer presents any
60 vouchers and information that the Treasurer shall require. (B) The
61 weekly compensation rate of each dependent entitled to receive
62 compensation under this section as a result of death arising from a
63 compensable injury occurring on or before September 30, 1977, shall be
64 adjusted as of October 1, 1977, and October 1, 1980, and thereafter, as
65 provided in this subdivision to provide the dependent with partial
66 cost-of-living adjustments in [his] the dependent's weekly
67 compensation rate. As of October 1, 1977, the weekly compensation
68 rate paid prior to October 1, 1977, to the dependent shall be increased
69 by twenty-five per cent. The partial cost-of-living adjustment provided
70 under this subdivision shall be paid by the employer without any
71 order or award from the commissioner. In addition, on each October
72 first, the weekly compensation rate of each dependent as of October 1,
73 1990, shall be increased by the percentage of the increase in the
74 maximum compensation rate over the maximum compensation rate of
75 October 1, 1990, as determined under the provisions of section 31-309
76 existing on October 1, 1977. The cost of the adjustments shall be paid
77 by the employer or [his] its insurance carrier who shall be reimbursed
78 [therefor] for such payments from the Second Injury Fund as provided

79 in section 31-354, [upon presentation of] provided (i) for claims filed
80 on or after the effective date of this act, the employer or its insurer
81 notifies the custodian of the fund by certified mail no later than one
82 calendar year after the date the claim is initially filed or, in the case of a
83 contested claim, no later than one year after the finding of
84 compensability, and provided further, the employer or its insurer
85 presents any vouchers and information that the Treasurer shall
86 require, and (ii) for claims filed prior to the effective date of this act,
87 the employer or its insurer notifies the custodian of the fund by
88 certified mail no later than one calendar year from the effective date of
89 this act, and provided further, the employer or its insurer presents any
90 vouchers and information that the Treasurer shall require.

91 Sec. 2. Subsection (c) of section 31-307a of the general statutes is
92 repealed and the following is substituted in lieu thereof:

93 (c) On and after October 1, 1997, the weekly compensation rate of
94 each employee entitled to receive compensation under section 31-307
95 as a result of an injury sustained on or after July 1, 1993, [which] that
96 totally incapacitates the employee permanently, shall be adjusted as
97 provided in this subsection as of October 1, 1997, or the October first
98 following the injury date, whichever is later, and annually on each
99 subsequent October first, to provide the injured employee with a cost-
100 of-living adjustment in [his] the injured employee's weekly
101 compensation rate as determined as of the date of injury under section
102 31-309. If the maximum weekly compensation rate, as determined
103 under the provisions of said section 31-309, to be effective as of any
104 October first following the date of the injury, is greater than the
105 maximum weekly compensation rate prevailing as of the date of
106 injury, the weekly compensation rate [which] that the injured
107 employee was entitled to receive as of the date of injury shall be
108 increased by the percentage of the increase in the maximum weekly
109 compensation rate required by the provisions of said section 31-309
110 from the date of the injury to such October first. The cost-of-living

111 adjustments provided under this subdivision shall be paid by the
112 employer without any order or award from the commissioner. The
113 adjustments shall apply to each payment made in the next succeeding
114 twelve-month period commencing with October 1, 1997, or the
115 October first next succeeding the date of injury, whichever is later.
116 With respect to any employee receiving benefits on October 1, 1997,
117 with respect to any such injury occurring on or after July 1, 1993, and
118 before October 1, 1997, or with respect to any employee who was
119 adjudicated to be totally incapacitated permanently subsequent to the
120 date of [his] injury or is totally incapacitated permanently due to the
121 fact that the employee has been totally incapacitated by such an injury
122 for a period of five years or more, such benefit shall be recalculated to
123 October 1, 1997, to the date of such adjudication or to the end of such
124 five-year period, as the case may be, as if such benefits had been
125 subject to recalculation annually under the provisions of this
126 subsection. The difference between the amount of any benefits [which]
127 that would have been paid to such employee if such benefits had been
128 subject to such recalculation and the actual amount of benefits paid
129 during the period between such injury and such recalculation shall be
130 paid to the dependent not later than December 1, 1997, or thirty days
131 after such adjudication or the end of such period, as the case may be, in
132 a lump-sum payment. The employer or [his] its insurer shall be
133 reimbursed by the Second Injury Fund, as provided in section 31-354,
134 for adjustments, including lump-sum payments, payable under this
135 subsection for compensable injuries occurring on or after July 1, 1993,
136 and before October 1, 1997, [upon presentation of] provided (1) for
137 claims filed on or after the effective date of this act, the employer or its
138 insurer notifies the custodian of the fund by certified mail no later than
139 one calendar year after the date the claim is initially filed or, in the case
140 of a contested claim, no later than one year after the finding of
141 compensability, and provided further, the employer or its insurer
142 presents any vouchers and information that the Treasurer shall
143 require, and (2) for claims filed prior to the effective date of this act, the

144 employer or its insurer notifies the custodian of the fund by certified
145 mail no later than one calendar year from the effective date of this act,
146 and provided further, the employer or its insurer presents any
147 vouchers and information that the Treasurer shall require.

148 Sec. 3. Subsection (a) of section 31-310 of the general statutes is
149 repealed and the following is substituted in lieu thereof:

150 (a) For the purposes of this chapter, the average weekly wage shall
151 be ascertained by dividing the total wages received by the injured
152 employee from the employer in whose service [he] the employee is
153 injured during the fifty-two calendar weeks immediately preceding the
154 week during which [he] the employee was injured, by the number of
155 calendar weeks during which, or any portion of which, the employee
156 was actually employed by the employer, but, in making the
157 computation, absence for seven consecutive calendar days, although
158 not in the same calendar week, shall be considered as absence for a
159 calendar week. When the employment commenced otherwise than at
160 the beginning of a calendar week, that calendar week and wages
161 earned during that week shall be excluded in making the computation.
162 When the period of employment immediately preceding the injury is
163 computed to be less than a net period of two calendar weeks, the
164 employee's weekly wage shall be considered to be equivalent to the
165 average weekly wage prevailing in the same or similar employment in
166 the same locality at the date of the injury except that, when the
167 employer has agreed to pay a certain hourly wage to the employee, the
168 hourly wage so agreed upon shall be the hourly wage for the injured
169 employee and [his] the injured employee's average weekly wage shall
170 be computed by multiplying the hourly wage by the regular number of
171 hours that is permitted each week in accordance with the agreement.
172 For the purpose of determining the amount of compensation to be paid
173 in the case of a minor under the age of eighteen who has sustained an
174 injury entitling [him] the minor to compensation for total or partial
175 incapacity for a period of fifty-two or more weeks, or to specific

176 indemnity for any injury under the provisions of section 31-308, the
177 commissioner may add fifty per cent to [his] the minor's average
178 weekly wage, except in the case of a minor under the age of sixteen,
179 the commissioner may add one hundred per cent to [his] the minor's
180 average weekly wage. When the injured employee is a trainee or
181 apprentice receiving a subsistence allowance from the United States
182 because of war service, the allowance shall be added to [his] the
183 injured employee's actual earnings in determining the average weekly
184 wage. Where the injured employee has worked for more than one
185 employer as of the date of the injury and the average weekly wage
186 received from the employer in whose employ [he] the employee was
187 injured, as determined under the provisions of this section, are
188 insufficient for [him] the employee to obtain the maximum weekly
189 compensation rate from the employer under section 31-309, prevailing
190 as of the date of the injury, [his] the employee's average weekly wages
191 shall be calculated upon the basis of wages earned from all such
192 employers in the period of concurrent employment not in excess of
193 fifty-two weeks prior to the date of the injury, but the employer in
194 whose employ the injury occurred shall be liable for all medical and
195 hospital costs and a portion of the compensation rate equal to seventy-
196 five per cent of the average weekly wage paid by [him] the employer
197 to the injured employee, after such earnings have been reduced by any
198 deduction for federal or state taxes, or both, and for the federal
199 Insurance Contribution Act made from such employee's total wages
200 received from such employer during the period of calculation of such
201 average weekly wage, but not less than an amount equal to the
202 minimum compensation rate prevailing as of the date of the injury.
203 The remaining portion of the applicable compensation rate shall be
204 paid from the Second Injury Fund, [upon submission to the Treasurer
205 by the employer or the employer's insurer of] provided (1) for claims
206 filed on or after the effective date of this act, the employer or its insurer
207 notifies the custodian of the fund by certified mail no later than one
208 calendar year after the date the claim is initially filed or, in the case of a

209 contested claim, no later than one year after the finding of
210 compensability, and provided further, the employer or its insurer
211 presents such vouchers and information as the Treasurer may require,
212 and (2) for claims filed prior to the effective date of this act, the
213 employer or its insurer notifies the custodian of the fund by certified
214 mail no later than one calendar year from the effective date of this act,
215 and provided further, the employer or its insurer presents any
216 vouchers and information that the Treasurer may require. In cases
217 [which] that involve concurrent employment and in which there is a
218 claim against a third party, the injured employee or the employer in
219 whose employ the injury was sustained or the employer's insurer shall
220 advise the custodian of the Second Injury Fund if there is a third party
221 claim, and the employee, employer or employer's insurer shall pursue
222 its subrogation rights as provided for in section 31-293 and shall
223 include in its claim all compensation paid by the Second Injury Fund
224 and shall reimburse the Second Injury Fund for all payments made for
225 compensation in the event of a recovery against the third party.

LAB *JOINT FAVORABLE SUBST.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Potential Minimal Saving (Second Injury Fund)

Affected Agencies: Office of the State Treasurer

Municipal Impact: None

Explanation

State Impact:

The one-year statute of limitation may result in a minimal saving (less than \$100,000 per year) to the Second Injury Fund. The estimate is based on past payments made by the Office of the State Treasurer on Second Injury Fund claims submitted without a statute of limitation.

OLR Bill Analysis

sHB 6884

AN ACT ESTABLISHING A STATUTE OF LIMITATIONS ON MAKING A CLAIM AGAINST THE SECOND INJURY FUND FOR REIMBURSEMENT.

SUMMARY:

This bill establishes a one-year statute of limitations for employers and insurance carriers seeking certain types of reimbursement from the Second Injury Fund. Currently, there is no statute of limitations for these claims for reimbursement.

EFFECTIVE DATE: October 1, 2001

COVERED CLAIMS

The one-year statute of limitations applies to claims for reimbursement for: (1) cost-of-living adjustments to certain dependents of deceased claimants injured on or after July 1, 1993, and before October 1, 1997, and on or before September 30, 1977; (2) cost-of-living adjustments for workers permanently and totally incapacitated on or after July 1, 1993, and before October 1, 1997; and (3) benefits provided to injured workers who had two or more jobs at the time of their injury.

TIME LIMIT

For claims filed on or after October 1, 2001, the employer or insurer must notify the fund by certified mail not later than one year after the initial claim is filed, or, in the case of a contested claim, not later than one year after the finding of compensability.

For claims filed prior to October 1, 2001, the employer or insurer must notify the fund by certified mail not later than September 30, 2002.

BACKGROUND

Second Injury Fund

The Second Injury Fund is a state-run workers' compensation fund financed by state employers and operated by the state treasurer. Among other things, the fund pays or contributes to workers' compensation benefits for workers with preexisting disabilities who were reinjured prior to July 1, 1995, whose employers are uninsured, or who worked more than one job when injured.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute
Yea 14 Nay 0