



General Assembly

January Session, 2001

Raised Bill No. 6884

LCO No. 4234

Referred to Committee on Labor and Public Employees

Introduced by:
(LAB)

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2 general statutes is repealed and the following is substituted in lieu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
12 amended by this act, as of the date of the injury but not more than the
13 maximum weekly compensation rate set forth in section 31-309 for the
14 year in which the injury occurred or less than twenty dollars weekly.
15 (A) The weekly compensation rate of each dependent entitled to

16 receive compensation under this section as a result of death arising
17 from a compensable injury occurring on or after October 1, 1977, shall
18 be adjusted annually as provided in this subdivision as of the
19 following October first, and each subsequent October first, to provide
20 the dependent with a cost-of-living adjustment in [his] the dependent's
21 weekly compensation rate as determined as of the date of the injury
22 under section 31-309. If the maximum weekly compensation rate, as
23 determined under the provisions of said section 31-309, to be effective
24 as of any October first following the date of the injury, is greater than
25 the maximum weekly compensation rate prevailing at the date of the
26 injury, the weekly compensation rate [which] that the injured
27 employee was entitled to receive at the date of the injury or October 1,
28 1990, whichever is later, shall be increased by the percentage of the
29 increase in the maximum weekly compensation rate required by the
30 provisions of said section 31-309 from the date of the injury or October
31 1, 1990, whichever is later, to such October first. The cost-of-living
32 increases provided under this subdivision shall be paid by the
33 employer without any order or award from the commissioner. The
34 adjustments shall apply to each payment made in the next succeeding
35 twelve-month period commencing with the October first next
36 succeeding the date of the injury. With respect to any dependent
37 receiving benefits on October 1, 1997, with respect to any injury
38 occurring on or after July 1, 1993, and before October 1, 1997, such
39 benefit shall be recalculated to October 1, 1997, as if such benefits had
40 been subject to recalculation annually under this subparagraph. The
41 difference between the amount of any benefits [which] that would
42 have been paid to such dependent if such benefits had been subject to
43 such recalculation and the actual amount of benefits paid during the
44 period between such injury and such recalculation shall be paid to the
45 dependent not later than December 1, 1997, in a lump-sum payment.
46 The employer or [his] its insurer shall be reimbursed by the Second
47 Injury Fund, as provided in section 31-354, for adjustments, including
48 lump-sum payments, payable under this subparagraph for deaths
49 from compensable injuries occurring on or after July 1, 1993, and

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

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

83 (c) On and after October 1, 1997, the weekly compensation rate of
84 each employee entitled to receive compensation under section 31-307
85 as a result of an injury sustained on or after July 1, 1993, [which] that
86 totally incapacitates the employee permanently, shall be adjusted as
87 provided in this subsection as of October 1, 1997, or the October first
88 following the injury date, whichever is later, and annually on each
89 subsequent October first, to provide the injured employee with a cost-
90 of-living adjustment in [his] the injured employee's weekly
91 compensation rate as determined as of the date of injury under section
92 31-309. If the maximum weekly compensation rate, as determined
93 under the provisions of said section 31-309, to be effective as of any
94 October first following the date of the injury, is greater than the
95 maximum weekly compensation rate prevailing as of the date of
96 injury, the weekly compensation rate [which] that the injured
97 employee was entitled to receive as of the date of injury shall be
98 increased by the percentage of the increase in the maximum weekly
99 compensation rate required by the provisions of said section 31-309
100 from the date of the injury to such October first. The cost-of-living
101 adjustments provided under this subdivision shall be paid by the
102 employer without any order or award from the commissioner. The
103 adjustments shall apply to each payment made in the next succeeding
104 twelve-month period commencing with October 1, 1997, or the
105 October first next succeeding the date of injury, whichever is later.
106 With respect to any employee receiving benefits on October 1, 1997,
107 with respect to any such injury occurring on or after July 1, 1993, and
108 before October 1, 1997, or with respect to any employee who was
109 adjudicated to be totally incapacitated permanently subsequent to the
110 date of [his] injury or is totally incapacitated permanently due to the
111 fact that the employee has been totally incapacitated by such an injury
112 for a period of five years or more, such benefit shall be recalculated to
113 October 1, 1997, to the date of such adjudication or to the end of such
114 five-year period, as the case may be, as if such benefits had been
115 subject to recalculation annually under the provisions of this
116 subsection. The difference between the amount of any benefits [which]

117 that would have been paid to such employee if such benefits had been
118 subject to such recalculation and the actual amount of benefits paid
119 during the period between such injury and such recalculation shall be
120 paid to the dependent not later than December 1, 1997, or thirty days
121 after such adjudication or the end of such period, as the case may be, in
122 a lump-sum payment. The employer or [his] its insurer shall be
123 reimbursed by the Second Injury Fund, as provided in section 31-354,
124 for adjustments, including lump-sum payments, payable under this
125 subsection for compensable injuries occurring on or after July 1, 1993,
126 and before October 1, 1997, [upon presentation of] provided the
127 employer or its insurer notifies the custodian of the fund by certified
128 mail no later than one calendar year after the date the claim is initially
129 filed or, in the case of a contested claim, no later than one year after the
130 finding of compensability, and provided further, the employer or its
131 insurer presents any vouchers and information that the Treasurer shall
132 require.

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

135 (a) For the purposes of this chapter, the average weekly wage shall
136 be ascertained by dividing the total wages received by the injured
137 employee from the employer in whose service [he] the employee is
138 injured during the fifty-two calendar weeks immediately preceding the
139 week during which [he] the employee was injured, by the number of
140 calendar weeks during which, or any portion of which, the employee
141 was actually employed by the employer, but, in making the
142 computation, absence for seven consecutive calendar days, although
143 not in the same calendar week, shall be considered as absence for a
144 calendar week. When the employment commenced otherwise than at
145 the beginning of a calendar week, that calendar week and wages
146 earned during that week shall be excluded in making the computation.
147 When the period of employment immediately preceding the injury is
148 computed to be less than a net period of two calendar weeks, the
149 employee's weekly wage shall be considered to be equivalent to the

150 average weekly wage prevailing in the same or similar employment in
151 the same locality at the date of the injury except that, when the
152 employer has agreed to pay a certain hourly wage to the employee, the
153 hourly wage so agreed upon shall be the hourly wage for the injured
154 employee and [his] the injured employee's average weekly wage shall
155 be computed by multiplying the hourly wage by the regular number of
156 hours that is permitted each week in accordance with the agreement.
157 For the purpose of determining the amount of compensation to be paid
158 in the case of a minor under the age of eighteen who has sustained an
159 injury entitling [him] the minor to compensation for total or partial
160 incapacity for a period of fifty-two or more weeks, or to specific
161 indemnity for any injury under the provisions of section 31-308, the
162 commissioner may add fifty per cent to [his] the minor's average
163 weekly wage, except in the case of a minor under the age of sixteen,
164 the commissioner may add one hundred per cent to [his] the minor's
165 average weekly wage. When the injured employee is a trainee or
166 apprentice receiving a subsistence allowance from the United States
167 because of war service, the allowance shall be added to [his] the
168 injured employee's actual earnings in determining the average weekly
169 wage. Where the injured employee has worked for more than one
170 employer as of the date of the injury and the average weekly wage
171 received from the employer in whose employ [he] the employee was
172 injured, as determined under the provisions of this section, are
173 insufficient for [him] the employee to obtain the maximum weekly
174 compensation rate from the employer under section 31-309, prevailing
175 as of the date of the injury, [his] the employee's average weekly wages
176 shall be calculated upon the basis of wages earned from all such
177 employers in the period of concurrent employment not in excess of
178 fifty-two weeks prior to the date of the injury, but the employer in
179 whose employ the injury occurred shall be liable for all medical and
180 hospital costs and a portion of the compensation rate equal to seventy-
181 five per cent of the average weekly wage paid by [him] the employer
182 to the injured employee, after such earnings have been reduced by any
183 deduction for federal or state taxes, or both, and for the federal

184 Insurance Contribution Act made from such employee's total wages
185 received from such employer during the period of calculation of such
186 average weekly wage, but not less than an amount equal to the
187 minimum compensation rate prevailing as of the date of the injury.
188 The remaining portion of the applicable compensation rate shall be
189 paid from the Second Injury Fund, [upon submission to the Treasurer
190 by the employer or the employer's insurer of] provided the employer
191 or its insurer notifies the custodian of the fund by certified mail no
192 later than one calendar year after the date the claim is initially filed or,
193 in the case of a contested claim, no later than one year after the finding
194 of compensability, and provided further, the employer or its insurer
195 submits such vouchers and information as the Treasurer may require.
196 In cases [which] that involve concurrent employment and in which
197 there is a claim against a third party, the injured employee or the
198 employer in whose employ the injury was sustained or the employer's
199 insurer shall advise the custodian of the Second Injury Fund if there is
200 a third party claim, and the employee, employer or employer's insurer
201 shall pursue its subrogation rights as provided for in section 31-293
202 and shall include in its claim all compensation paid by the Second
203 Injury Fund and shall reimburse the Second Injury Fund for all
204 payments made for compensation in the event of a recovery against
205 the third party.

Statement of Purpose:

To impose a one-year statute of limitations on making a claim against the Second Injury Fund for reimbursement of cost-of-living allowances and on account of concurrent employment.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]