



House of Representatives

General Assembly

File No. 783

January Session, 2009

House Bill No. 6683

House of Representatives, April 21, 2009

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING THE RESOLUTION OF CLAIMS INVOLVING WORKERS' COMPENSATION LIENS.

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

1 Section 1. Subsection (a) of section 31-293 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2009*):

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

15 the provisions of this chapter may bring an action against such person
16 to recover any amount that he has paid or has become obligated to pay
17 as compensation to the injured employee. If the employee, the
18 employer or the custodian of the Second Injury Fund brings an action
19 against such person, he shall immediately notify the others, in writing,
20 by personal presentation or by registered or certified mail, of the action
21 and of the name of the court to which the writ is returnable, and the
22 others may join as parties plaintiff in the action within thirty days after
23 such notification, and, if the others fail to join as parties plaintiff, their
24 right of action against such person shall abate. In any case in which an
25 employee brings an action against a party other than an employer who
26 failed to comply with the requirements of subsection (b) of section 31-
27 284, in accordance with the provisions of this section, and the
28 employer is a party defendant in the action, the employer may join as a
29 party plaintiff in the action. The bringing of any action against an
30 employer shall not constitute notice to the employer within the
31 meaning of this section. If the employer and the employee join as
32 parties plaintiff in the action and any damages are recovered, the
33 damages shall be so apportioned that the claim of the employer, as
34 defined in this section, shall take precedence over that of the injured
35 employee in the proceeds of the recovery, after the deduction of
36 reasonable and necessary expenditures, including attorneys' fees,
37 incurred by the employee in effecting the recovery. If the action has
38 been brought by the employee, the claim of the employer shall be
39 reduced by an amount that represents the employer's contribution
40 toward attorney's fees for the collection of the employer's claim from
41 the proceeds of the recovery. Such amount shall be computed by
42 multiplying the total amount of such reasonable attorney's fees and
43 costs by a fraction, the numerator of which shall be the amount of
44 reimbursable workers' compensation benefits received by the
45 employee, and the denominator of which shall be the amount of
46 damages recovered by the employee, less court costs. In no event shall
47 such amount exceed one-third of the amount of the benefits to be
48 reimbursed to the employer. No right to reimbursement by the
49 employer shall attach until such time as the proceeds of the recovery

50 are in the possession and control of such employee. The rendition of a
51 judgment in favor of the employee or the employer against the party
52 shall not terminate the employer's obligation to make further
53 compensation which the commissioner thereafter deems payable to the
54 injured employee. If the damages, after deducting the employee's
55 expenses as provided in this subsection, are more than sufficient to
56 reimburse the employer, damages shall be assessed in his favor in a
57 sum sufficient to reimburse him for his claim, and the excess shall be
58 assessed in favor of the injured employee. No compromise with the
59 person by either the employer or the employee shall be binding upon
60 or affect the rights of the other, unless assented to by him. For the
61 purposes of this section, the claim of the employer shall consist of (1)
62 the amount of any compensation which he has paid on account of the
63 injury which is the subject of the suit, and (2) an amount equal to the
64 present worth of any probable future payments which he has by award
65 become obligated to pay on account of the injury. The word
66 "compensation", as used in this section, shall be construed to include
67 incapacity payments to an injured employee, payments to the
68 dependents of a deceased employee, sums paid out for surgical,
69 medical and hospital services to an injured employee, the burial fee
70 provided by subdivision (1) of subsection (a) of section 31-306,
71 payments made under the provisions of sections 31-312 and 31-313,
72 and payments made under the provisions of section 31-284b in the case
73 of an action brought under this section by the employer or an action
74 brought under this section by the employee in which the employee has
75 alleged and been awarded such payments as damages. Each employee
76 who brings an action against a party in accordance with the provisions
77 of this subsection shall include in his complaint (A) the amount of any
78 compensation paid by the employer or the Second Injury Fund on
79 account of the injury which is the subject of the suit, and (B) the
80 amount equal to the present worth of any probable future payments
81 which the employer or the Second Injury Fund has, by award, become
82 obligated to pay on account of the injury. Notwithstanding the
83 provisions of this subsection, when any injury for which compensation
84 is payable under the provisions of this chapter has been sustained

85 under circumstances creating in a person other than an employer who
86 has complied with the requirements of subsection (b) of section 31-284,
87 a legal liability to pay damages for the injury and the injured employee
88 has received compensation for the injury from such employer, its
89 workers' compensation insurance carrier or the Second Injury Fund
90 pursuant to the provisions of this chapter, the employer, insurance
91 carrier or Second Injury Fund shall have a lien upon any judgment
92 received by the employee against the party or any settlement received
93 by the employee from the party, provided the employer, insurance
94 carrier or Second Injury Fund shall give written notice of the lien to the
95 party prior to such judgment or settlement.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	31-293(a)

JUD *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Department of Administrative Services - Workers' Comp. Claims	GF - Revenue Loss	Significant	Significant

Note: GF=General Fund

Municipal Impact: None

Explanation

Under current law, an injured employee eligible for workers' compensation benefits can sue someone who is liable for damages for the injury, with certain exceptions. An employer who has paid workers' compensation benefits to the employee can also sue or join an employee's lawsuit. If the employer and employee are both plaintiffs and recover damages, they are apportioned so that the employer's claim takes precedence, after deductions for reasonable and necessary expenses including attorneys' fees incurred by the employee.

Under the bill, if the employee brings the action, the employer's claim is reduced by an amount that represents the employer's contribution toward attorneys' fees to collect the employer's claim from the proceeds. Under the bill, the amount cannot exceed one-third of the amount of benefits to be reimbursed to the employer.

This bill will result in a significant revenue loss to the state. The Department of Administrative Services workers' compensation program has recovered an average of \$1.3 million over the past two fiscal years through third party lien recovery activity. Under this bill, which requires the employer to contribute up to one-third of its recovery to pay the plaintiff's attorneys' fees, it is estimated that the state would realize a revenue loss of up to \$430,000 per fiscal year.

Additionally, the bill provides that the employer's right of reimbursement does not attach until the employee possesses and controls the proceeds. This provision may weaken the state's lien rights, which could result in a significant revenue loss.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Department of Administrative Services

OLR Bill Analysis

HB 6683

AN ACT CONCERNING THE RESOLUTION OF CLAIMS INVOLVING WORKERS' COMPENSATION LIENS.

SUMMARY:

By law, an injured employee eligible for workers' compensation benefits can sue someone who is liable for damages for the injury except for an employer who complies with the workers' compensation law or another employee. An employer who has paid or is obligated to pay workers' compensation benefits to the employee can also sue or join an employee's lawsuit. If the employer and employee are both plaintiffs and recover damages, they are apportioned so that the employer's claim takes precedence, after deductions for reasonable and necessary expenses including attorneys' fees incurred by the employee.

Under the bill, if the employee brings the action, the employer's claim is reduced by an amount that represents the employer's contribution toward attorneys' fees to collect the employer's claim from the proceeds. The bill provides the following method to compute the reduction:

		Reimbursable Benefits Received by Employee			
Total Attorney Fees	X	_____	--		Court Costs
		Amount of Damages Recovered by Employee			

Under the bill, the amount cannot exceed one-third of the amount of benefits to be reimbursed to the employer. The bill provides that the employer's right of reimbursement does not attach until the employee possesses and controls the proceeds.

By law, an employer, its insurance carrier, or the Second Injury Fund paying benefits to an injured employee has a lien on any judgment or settlement the employee receives if they provide notice of the lien before judgment or settlement.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Second Injury Fund

The Second Injury Fund provides workers' compensation insurance coverage to workers whose employers failed to provide it. By law, the Second Injury Fund custodian can also sue or join an employee's lawsuit.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable
Yea 34 Nay 6 (04/03/2009)