



General Assembly

Substitute Bill No. 334

February Session, 2010

* SB00334INS_042710 *

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

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2 repealed and the following is substituted in lieu thereof (*Effective*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, 2010*):

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,
24 their right of action against such person shall abate.] In any case in
25 which an employee brings an action against a party other than an
26 employer who failed to comply with the requirements of subsection (b)
27 of section 31-284, in accordance with the provisions of this section, and
28 the employer is a party defendant in the action, the employer may join
29 as a 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 and the employer does not join as a
39 party plaintiff in the action, the claim of the employer shall be reduced
40 by one-third of the amount of the benefits to be reimbursed to the
41 employer for the purpose of paying reasonable and necessary
42 expenditures, including attorney's fees, incurred by the employee in
43 effecting the recovery. The rendition of a judgment in favor of the
44 employee or the employer against the party shall not terminate the
45 employer's obligation to make further compensation which the
46 commissioner thereafter deems payable to the injured employee. If the
47 damages, after deducting the employee's expenses as provided in this
48 subsection, are more than sufficient to reimburse the employer,
49 damages shall be assessed in his favor in a sum sufficient to reimburse
50 him for his claim, and the excess shall be assessed in favor of the
51 injured employee. No compromise with the person by either the
52 employer or the employee shall be binding upon or affect the rights of
53 the other, unless assented to by him. For the purposes of this section,
54 the claim of the employer shall consist of (1) the amount of any

55 compensation which he has paid on account of the injury which is the
56 subject of the suit, and (2) an amount equal to the present worth of any
57 probable future payments which he has by award become obligated to
58 pay on account of the injury. The word "compensation", as used in this
59 section, shall be construed to include incapacity payments to an
60 injured employee, payments to the dependents of a deceased
61 employee, sums paid out for surgical, medical and hospital services to
62 an injured employee, the burial fee provided by subdivision (1) of
63 subsection (a) of section 31-306, payments made under the provisions
64 of sections 31-312 and 31-313, and payments made under the
65 provisions of section 31-284b in the case of an action brought under
66 this section by the employer or an action brought under this section by
67 the employee in which the employee has alleged and been awarded
68 such payments as damages. Each employee who brings an action
69 against a party in accordance with the provisions of this subsection
70 shall include in his complaint (A) the amount of any compensation
71 paid by the employer or the Second Injury Fund on account of the
72 injury which is the subject of the suit, and (B) the amount equal to the
73 present worth of any probable future payments which the employer or
74 the Second Injury Fund has, by award, become obligated to pay on
75 account of the injury. Notwithstanding the provisions of this
76 subsection, when any injury for which compensation is payable under
77 the provisions of this chapter has been sustained under circumstances
78 creating in a person other than an employer who has complied with
79 the requirements of subsection (b) of section 31-284, a legal liability to
80 pay damages for the injury and the injured employee has received
81 compensation for the injury from such employer, its workers'
82 compensation insurance carrier or the Second Injury Fund pursuant to
83 the provisions of this chapter, the employer, insurance carrier or
84 Second Injury Fund shall have a lien upon any judgment received by
85 the employee against the party or any settlement received by the
86 employee from the party, provided the employer, insurance carrier or
87 Second Injury Fund shall give written notice of the lien to the party
88 prior to such judgment or settlement.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2010</i>	31-293(a)
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INS *Joint Favorable Subst.*