



House of Representatives

General Assembly

File No. 280

January Session, 2011

House Bill No. 6474

House of Representatives, March 29, 2011

The Committee on Judiciary reported through REP. FOX of the 146th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING THE RESOLUTION OF LIENS IN WORKERS' COMPENSATION CASES.

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2 repealed and the following is substituted in lieu thereof (*Effective July*
3 *1, 2011*):

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 one-third of the amount of the benefits to be reimbursed to
40 the employer, unless otherwise agreed upon by the parties, which
41 reduction shall inure solely to the benefit of the employee, except that
42 such reduction shall not apply if the reimbursement is to the state of
43 Connecticut or a political subdivision of the state including a local
44 public agency, as the employer, or the custodian of the Second Injury
45 Fund. The rendition of a judgment in favor of the employee or the
46 employer against the party shall not terminate the employer's
47 obligation to make further compensation which the commissioner
48 thereafter deems payable to the injured employee. If the damages, after
49 deducting the employee's expenses as provided in this subsection, are

50 more than sufficient to reimburse the employer, damages shall be
51 assessed in his favor in a sum sufficient to reimburse him for his claim,
52 and the excess shall be assessed in favor of the injured employee. No
53 compromise with the person by either the employer or the employee
54 shall be binding upon or affect the rights of the other, unless assented
55 to by him. For the purposes of this section, the claim of the employer
56 shall consist of (1) the amount of any compensation which he has paid
57 on account of the injury which is the subject of the suit and (2) an
58 amount equal to the present worth of any probable future payments
59 which he has by award become obligated to pay on account of the
60 injury. The word "compensation", as used in this section, shall be
61 construed to include incapacity payments to an injured employee,
62 payments to the dependents of a deceased employee, sums paid out
63 for surgical, medical and hospital services to an injured employee, the
64 burial fee provided by subdivision (1) of subsection (a) of section 31-
65 306, payments made under the provisions of sections 31-312 and 31-
66 313, and payments made under the provisions of section 31-284b in the
67 case of an action brought under this section by the employer or an
68 action brought under this section by the employee in which the
69 employee has alleged and been awarded such payments as damages.
70 Each employee who brings an action against a party in accordance
71 with the provisions of this subsection shall include in his complaint (A)
72 the amount of any compensation paid by the employer or the Second
73 Injury Fund on account of the injury which is the subject of the suit
74 and (B) the amount equal to the present worth of any probable future
75 payments which the employer or the Second Injury Fund has, by
76 award, become obligated to pay on account of the injury.
77 Notwithstanding the provisions of this subsection, when any injury for
78 which compensation is payable under the provisions of this chapter
79 has been sustained under circumstances creating in a person other
80 than an employer who has complied with the requirements of
81 subsection (b) of section 31-284, a legal liability to pay damages for the
82 injury and the injured employee has received compensation for the
83 injury from such employer, its workers' compensation insurance
84 carrier or the Second Injury Fund pursuant to the provisions of this

85 chapter, the employer, insurance carrier or Second Injury Fund shall
86 have a lien upon any judgment received by the employee against the
87 party or any settlement received by the employee from the party,
88 provided the employer, insurance carrier or Second Injury Fund shall
89 give written notice of the lien to the party prior to such judgment or
90 settlement.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2011</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:*** None***Municipal Impact:*** None***Explanation***

The bill exempts the state and municipalities and is not anticipated to result in a fiscal impact as it does not alter the state or municipalities' ability to recover damages from third parties.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**HB 6474*****AN ACT CONCERNING THE RESOLUTION OF LIENS IN WORKERS' COMPENSATION CASES.*****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 in order to be reimbursed for benefits paid. 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 this bill, if the employee brings the action, the employer's claim is reduced by one-third of the amount to be reimbursed to the employer unless the parties agree otherwise. The reduction is solely to the employee's benefit. But the reduction does not apply if reimbursement is to the (1) state or a political subdivision, including a local public agency, as the employer or (2) Second Injury Fund custodian.

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: July 1, 2011

BACKGROUND

Second Injury Fund

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

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 24 Nay 8 (03/11/2011)