



General Assembly

February Session, 2012

Raised Bill No. 422

LCO No. 1638

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Referred to Committee on Judiciary

Introduced by:
(JUD)

**AN ACT CONCERNING APPORTIONMENT OF DAMAGES 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 2012 supplement to
2 the general statutes is repealed and the following is substituted in lieu
3 thereof (*Effective October 1, 2012*):

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 unless the employer,
25 insurance carrier or Second Injury Fund gives written notice of a lien in
26 accordance with this subsection. In any case in which an employee
27 brings an action against a party other than an employer who failed to
28 comply with the requirements of subsection (b) of section 31-284, in
29 accordance with the provisions of this section, and the employer is a
30 party defendant in the action, the employer may join as a party
31 plaintiff in the action. The bringing of any action against an employer
32 shall not constitute notice to the employer within the meaning of this
33 section. If the [employer and the employee join as parties plaintiff in
34 the action] employee brings an action and the employer does not join
35 as a party plaintiff, and any damages are recovered, the damages shall
36 be so apportioned that the claim of the employer, as defined in this
37 section, shall take precedence over that of the injured employee in the
38 proceeds of the recovery, after the deduction of one-third of the
39 amount of benefits paid by the employer for reasonable and necessary
40 expenditures, including attorneys' fees, incurred by the employee in
41 effecting the recovery, [. If the action has been brought by the
42 employee, the claim of the employer shall be reduced by one-third of
43 the amount of the benefits to be reimbursed to the employer, unless
44 otherwise agreed upon by the parties, which reduction shall inure
45 solely to the benefit of the employee,] except that such [reduction]
46 deduction shall not apply if the reimbursement is to the state of
47 Connecticut or a political subdivision of the state including a local
48 public agency, as the employer, or the custodian of the Second Injury
49 Fund. The rendition of a judgment in favor of the employee or the
50 employer against the party shall not terminate the employer's

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

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2012	31-293(a)

Statement of Purpose:

To revise the methodology of calculating reimbursement to an employer that has paid workers' compensation benefits to an injured employee when the employee brings an action against a third-party tortfeasor and recovers damages.

[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.]