



House of Representatives

General Assembly

File No. 638

February Session, 2014

Substitute House Bill No. 5595

House of Representatives, April 17, 2014

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

AN ACT CONCERNING COLLATERAL SOURCE PAYMENTS IN PERSONAL INJURY AND WRONGFUL DEATH ACTIONS AND REQUIRED DISCLOSURES UPON THE PURCHASE OF AN ANNUITY TO FUND PENSION BENEFITS.

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

1 Section 1. Section 52-225b of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2014, and*
3 *applicable to actions pending on or filed on or after said date*):

4 For the purposes of sections 52-225a to 52-225c, inclusive, as
5 amended by this act: "Collateral sources" means any payments made to
6 the claimant, or on [his] the claimant's behalf, by or pursuant to: (1)
7 Any health or sickness insurance, any automobile accident insurance
8 that provides health benefits, any managed care delivery system for
9 Medicaid benefits, and any other similar insurance benefits, except life
10 insurance benefits available to the claimant, whether purchased by
11 [him] the claimant or provided by others; or (2) any contract or
12 agreement of any group, organization, partnership or corporation to

13 provide, pay for or reimburse the costs of hospital, medical, dental or
14 other health care services. "Collateral sources" do not include amounts
15 received by a claimant as a settlement.

16 Sec. 2. Section 52-225a of the general statutes is repealed and the
17 following is substituted in lieu thereof (*Effective October 1, 2014*):

18 (a) In any civil action, whether in tort or in contract, [wherein] in
19 which the claimant seeks to recover damages resulting from (1)
20 personal injury or wrongful death occurring on or after October 1,
21 1987, or (2) personal injury or wrongful death, arising out of the
22 rendition of professional services by a health care provider, occurring
23 on or after October 1, 1985, and prior to October 1, 1986, if the action
24 was filed on or after October 1, 1987, and [wherein] in which liability is
25 admitted or is determined by the trier of fact and damages are
26 awarded to compensate the claimant, the court shall reduce the
27 amount of such award which represents economic damages, as
28 defined in subdivision (1) of subsection (a) of section 52-572h, by an
29 amount equal to the total of amounts determined to have been paid
30 under subsection (b) of this section less the total of amounts
31 determined to have been paid, contributed or forfeited under
32 subsection (c) of this section, except that there shall be no reduction by
33 the court for (A) a collateral source for which a right of subrogation
34 exists, and (B) the amount of collateral sources equal to the reduction
35 in the claimant's economic damages attributable to the claimant's
36 percentage of negligence pursuant to section 52-572h.

37 (b) Upon a finding of liability and an awarding of damages by the
38 trier of fact and before the court enters judgment, the court shall
39 receive evidence from the claimant and other appropriate persons
40 concerning the total amount of collateral sources which have been paid
41 for the benefit of the claimant as of the date the court enters judgment.
42 For purposes of this subsection, evidence that a physician or physician
43 assistant licensed under chapter 370, dentist licensed under chapter
44 379, chiropractor licensed under chapter 372, natureopath licensed
45 under chapter 373, physical therapist licensed under chapter 376,

46 podiatrist licensed under chapter 375, psychologist licensed under
47 chapter 383, an emergency medical technician certified under chapter
48 368d, optometrist licensed under chapter 380 or advanced practice
49 registered nurse licensed under chapter 378, accepted an amount less
50 than the total amount of any bill generated by such physician,
51 physician assistant, dentist, chiropractor, natureopath, physical
52 therapist, podiatrist, psychologist, emergency medical technician,
53 optometrist or advanced practice registered nurse, or evidence that an
54 insurer paid less than the total amount of any bill generated by such
55 physician, physician assistant, dentist, chiropractor, natureopath,
56 physical therapist, podiatrist, psychologist, emergency medical
57 technician, optometrist or advanced practice registered nurse, shall be
58 admissible as evidence of the total amount of collateral sources which
59 have been paid for the benefit of the claimant as of the date the court
60 enters judgment.

61 (c) The court shall receive evidence from the claimant and any other
62 appropriate person concerning any amount which has been paid,
63 contributed or forfeited, as of the date the court enters judgment, by, or
64 on behalf of, the claimant or members of [his] the claimant's immediate
65 family to secure [his] the claimant's right to any collateral source
66 benefit which [he] the claimant has received as a result of such injury
67 or death.

68 Sec. 3. (NEW) (*Effective October 1, 2014*) (a) For the purposes of this
69 section:

70 (1) "Insurer" means an insurer, as defined in section 38a-1 of the
71 general statutes;

72 (2) "Employer" means any person engaged in business in this state
73 who has two or more employees, but does not include the state or any
74 political subdivision thereof; and

75 (3) "Employee pension benefit plan" means an "employee pension
76 benefit plan", as defined in 29 USC 1002(2)(A).

77 (b) On and after October 1, 2014, each insurer that issues an
78 allocated or unallocated annuity contract to an employer or an
79 employee pension benefit plan on behalf of an employer, for the
80 purpose of providing retirement benefits to employees of the
81 employer, which annuity contract is not protected under the federal
82 Pension Benefit Guaranty Corporation, shall provide the following
83 disclosures in writing to each employee who is an intended beneficiary
84 of the annuity contract or the employee pension benefit plan not later
85 than fifteen days after the effective date of such annuity contract:

86 (1) If the annuity contract replaces or supersedes a pension
87 previously provided under the Employee Retirement Income Security
88 Act of 1974, (A) that the employee will lose protection provided under
89 the Employee Retirement Income Security Act of 1974 and the federal
90 Pension Benefit Guaranty Corporation, and that state law will govern
91 the employee's future benefits under the annuity contract, and (B)
92 information regarding any change in the taxation of such annuity
93 payments provided under state law as compared to the taxation of
94 pension benefits provided under the Employee Retirement Income
95 Security Act of 1974;

96 (2) The amount and scope of coverage, if any, that will be provided
97 by the Connecticut Insurance Guaranty Association in the event of the
98 insurer's financial impairment or insolvency, and the conditions that
99 must be met to qualify for such coverage;

100 (3) The extent to which annuity payments may be subject to the
101 claims of creditors or avoidance actions in bankruptcy proceedings;

102 (4) Information on the annuity contract terms, including (A) a
103 schedule of premium payments for the annuity contract, and (B) a
104 description of administrative expenses related to the purchase and
105 maintenance of the annuity contract;

106 (5) Information on how the employee may obtain a copy of the most
107 recent report regarding a financial examination or market conduct
108 examination conducted by the Insurance Commissioner, provided

109 such report may be disclosed by the Insurance Commissioner pursuant
110 to title 38a of the general statutes.

111 Sec. 4. Section 38a-816 of the 2014 supplement to the general statutes
112 is amended by adding subdivision (23) as follows (*Effective October 1,*
113 *2014*):

114 (NEW) (23) Any violation of section 3 of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014, and applicable to actions pending on or filed on or after said date</i>	52-225b
Sec. 2	<i>October 1, 2014</i>	52-225a
Sec. 3	<i>October 1, 2014</i>	New section
Sec. 4	<i>October 1, 2014</i>	38a-816

JUD *Joint Favorable Subst.*

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 requires, under certain conditions, disclosures by insurers that issue annuity contracts, which does not result in a fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5595*****AN ACT CONCERNING COLLATERAL SOURCE PAYMENTS IN PERSONAL INJURY AND WRONGFUL DEATH ACTIONS AND REQUIRED DISCLOSURES UPON THE PURCHASE OF AN ANNUITY TO FUND PENSION BENEFITS.*****SUMMARY:**

Under certain conditions, this bill requires disclosures by insurers that issue annuity contracts to employers or employee pension benefit plans on an employer's behalf for employee retirement benefits. Among other conditions, the bill only applies to contracts that are not protected by the federal Pension Benefit Guaranty Corporation (PBGC). Under the bill, failure to provide the required disclosure is deemed an unfair and deceptive insurance practice (see BACKGROUND).

By law, in personal injury or wrongful death cases, courts must generally reduce economic damage awards by the amount the claimant received from health insurance or other collateral sources (see BACKGROUND). The bill specifies that payments from a managed care delivery system for Medicaid benefits are considered collateral sources for this purpose.

EFFECTIVE DATE: October 1, 2014, and the provision on the definition of "collateral sources" applies to actions pending on or filed on or after that date.

DISCLOSURES FOR PENSION PLAN ANNUITY CONTRACTS***Applicability***

The bill requires insurers to provide certain disclosures when issuing annuity contracts to employers or employee pension benefit plans (as defined in the federal Employee Retirement Income Security

Act (ERISA)) on an employer's behalf for employee retirement benefits. The bill applies to annuity contracts, for private employers, that are not protected by PBGC (see BACKGROUND).

It applies to both allocated and unallocated annuity contracts. (An unallocated annuity is one that is not issued to and owned by an individual, except to the extent of benefits guaranteed to an individual by an insurer.)

Insurers must provide the disclosure, in writing, to employees who are intended beneficiaries of the annuity contract or pension benefit plan. They must do so no later than 15 days after the contract takes effect.

Disclosure Contents

Under the bill, the disclosure must include:

1. if the annuity contract replaces or supersedes a pension previously provided under ERISA, (a) that the employee will lose protection under ERISA and the PBGC and that state law will govern the employee's future benefits under the contract and (b) information on any change in the taxation of the annuity payments under state law as compared to the taxation of pension benefits under ERISA;
2. the amount and scope of any coverage that the Connecticut Insurance Guaranty Association will provide if the insurer becomes financially impaired or insolvent, and the conditions to qualify for this coverage;
3. the extent to which annuity payments may be subject to creditors' claims or avoidance actions in bankruptcy proceedings;
4. the contract terms, including a (a) schedule of premium payments and (b) description of administrative expenses related to the contract's purchase and maintenance; and

5. how the employee can obtain a copy of the insurance commissioner's most recent financial examination or market conduct examination, if the insurance statutes allow the report's disclosure.

BACKGROUND

ERISA and PBGC

ERISA sets minimum standards for private pension plans, including standards for participation, vesting, benefit accrual, funding, and pension management responsibility. ERISA also requires plans to provide certain disclosures to participants.

Under ERISA, most private defined benefit pension plans are required to obtain pension benefit insurance through the PBGC. The PBGC provides payment of certain benefits if these plans are terminated.

Connecticut Unfair Insurance Practice Act (CUIPA)

The law prohibits engaging in unfair or deceptive insurance acts or practices. CUIPA authorizes the insurance commissioner to issue regulations, conduct investigations and hearings, issue cease and desist orders, ask the attorney general to seek injunctive relief in superior court, impose fines, revoke or suspend licenses, and order restitution.

Fines may be up to (1) \$5,000 per violation to a \$50,000 maximum or (2) \$25,000 per violation to a \$250,000 maximum in any six-month period if knowingly committed. The law also imposes a fine of up to \$50,000, in addition to or in lieu of a license suspension or revocation, for violating a cease and desist order (CGS § 38a-817).

Collateral Source Rule

In personal injury or wrongful death cases, the law generally requires courts to reduce economic damages by the amount paid to the claimant by specified collateral sources (e.g., health insurance), less the amount paid, contributed, or forfeited by the claimant to secure the

collateral source benefit. Any amount the claimant received as a settlement is not considered a collateral source for this purpose.

By law, there is no reduction for (1) collateral sources for which a right of subrogation exists or (2) the amount of collateral sources equal to the reduction in the claimant's economic damages due to his or her percentage of negligence.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 36 Nay 4 (04/02/2014)