

**Testimony of  
Melissa Federico  
Before  
The Joint Committee on Insurance and Real Estate  
In Support of  
Senate Bill 239  
“An Act Prohibiting Certain Exclusions From Automobile Insurance Policy Coverage”  
February 26, 2015**

Senator Crisco, Representative Megna, members of the Insurance and Real Estate Committees. My name is Melissa Federico and I am the insurance coverage attorney for the Town of West Hartford. I am here today to testify in strong support of Senate Bill 239 “An Act Prohibiting Certain Exclusions From Automobile Insurance Policy Coverage.” The bill amends Section 31-293a to clarify the original, express intent of the 1969 Connecticut General Assembly, which was to prevent insurance carriers from excluding coverage to employers for a claim made against it by an employee involved in a motor vehicle accident with a fellow employee. This clarification is necessary because the existing statutory language has been interpreted by some insurance companies to deny coverage rightfully owed to municipalities, such as the Town of West Hartford. As a result, the Town was forced to pay a large settlement out of increasingly scarce public funds.

In general, the Connecticut Workers Compensation Act provides the exclusive remedy to injured employees. Section 31-293a carves out an exception to this general rule where “the action is based on the fellow employee’s negligence in the operation of a motor vehicle.” The exception is known as the “employee vs. employee” exception. Eventually insurance companies started writing “employee vs. employee” exclusions into their policies to avoid paying for these types of claims. To combat this, the legislature amended Section 31-293a in 1969 to add a provision stating that policies containing employee vs. employee exclusions were null and void when applied to claims brought under the “employee vs. employee” exception to the Workers’ Compensation Act. The legislature further added that any auto insurance policy containing such an exclusion would not satisfy our state law requirement that a motor vehicle owner meet minimum insurance requirements, which are now \$20,000 per claim, \$40,000 per accident.

The nullification provision of Section 31-293a was introduced in 1969 as Section 4 of Public Act 696. A copy of Section 4 is attached to this written testimony at Tab A. The legislative history indicates that Section 4 was “designed to correct the situation which has been created by the insurance carriers who deliberately refuse to cover the employers with respect to the operation of their vehicles by their employees. This proposal would nullify the provision that does not provide for *complete coverage of the employers* including the operation of such vehicles by the employers’ employees.” See Connecticut Gen. Assembly House Proceedings 1969 Vol.13 Part 8 at 4011 (May 26, 1969) (emphasis added). During the Senate Proceedings, Senator Miller further explained that the amendment “[m]akes mandatory that *no injury insurance policy* covering an automobile accident can any longer exclude actions by fellow employees against each other . . .” See Connecticut Gen. Assembly Senate Proceedings 1969 Vol.13 Part 7 at 3111-3112 (June 2, 1969) (emphasis added). Copies of the relevant portions of the 1969 House and Senate Proceedings are attached to this written testimony at Tab B.

For decades, the addition of this nullification provision was not challenged. Since 1969, the insurance industry has changed a great deal and the cost of insurance coverage has risen dramatically. As a result, many municipalities and companies have been forced to take on the risk themselves by self-insuring or partially self-insuring and then obtaining excess coverage for an amount over a high self-insured retention rate. They now use combinations of “basic” insurance policies or self-insurance programs and “umbrella” or “excess” insurance coverage programs to provide all sorts of variations in coverage for potential auto liabilities. For example, West Hartford does not have traditional automobile and commercial insurance policies that insure from dollar one. It is self-insured for all claims of \$250,000 or less and has excess automobile and general liability coverage of up to \$5 million for claims that are over \$250,000. It has had this partial self-insured program since the 1991-1992 fiscal year.

Perhaps recognizing this shift to self-insurance and excess policies, insurance companies over the past 10 years have started testing the waters by challenging the continued applicability of Section 31-293a’s nullification provision to these policies. In 2008, the Connecticut Supreme Court was asked, as an issue of first impression, whether Section 31-293a voided an employee vs. employee exclusion in an excess/umbrella policy that was offered as proof of financial responsibility. See Universal Underwriters Ins. Co. v. Paradis, 285 Conn. 342 (2008). Unfortunately, it does not appear that either party in that case presented the court with the 1969 legislative history. Without the benefit of knowing the legislature’s clearly articulated intent that no injury insurance policy covering an automobile accident can exclude coverage, the Supreme Court held that that the nullification provision of Section 31-293a only applied to basic auto insurance policies with the minimum coverage requirements, and did not apply to excess policies. The result of the Court’s decision was that any employer, like West Hartford, which meets its statutory minimum auto insurance requirements through self-insurance or through a basic insurance policy, but which buys separate insurance coverage for catastrophic claims, has no insurance coverage for a catastrophic employee v. employee claim beyond the bare minimum, even though the law expressly allows employees to bring such claims against their employers.

A Connecticut district court was also recently asked to interpret Section 31-293a and determine whether the nullification provision was applicable to policies other than primary automobile policies. See City of New Haven v. Ins. Co. of Pa, 2012 WL 774987 (D. Conn. Mar. 8, 2012) aff’d sub nom. 510 F. App’x 70 (2d Cir. 2013). It does not appear that this district court considered the 1969 legislative history either. The New Haven case involved claims between two police officers arising out of a collision with their cruisers. One officer died and the other was left a quadriplegic. The exposure in that case was \$10 million. Citing Paradis, the district court held that the statute appeared to only apply to primary automobile insurance policies and not to other types of insurance, such as comprehensive general liability policies, or excess or umbrella policies. 2012 WL 774987 at \*5. It concluded that other policies may therefore exclude fellow employee motor vehicle negligence claims without violating Section 31-293a. Id.

This narrow interpretation of Section 31-293a has caused a very substantial gap in insurance coverage for all employers. As the Risk Manager for the Town of West Hartford has testified, the Town was recently forced to fund a large settlement with 100% of its own funds after its excess insurance company took a similar position. Countless employers in Connecticut

are now faced with the same risk of being uninsured for employee vs. employee claims despite continuing to pay premiums for policies they cannot use.

The narrow interpretation also penalizes employers simply for having two employees involved in the same motor vehicle accident because coverage is available to non-employees under the same policy. For example, if an employee was involved in a motor vehicle accident with a third party (not another employee), the third party's claim is covered under the same excess policy. The legislative history to 31-293a does not support such an employer penalty. In fact, the 1969 amendment was made to prevent this exact kind of situation. There is therefore no rational explanation for the delineation currently drawn.

In both Paradis and City of New Haven, the courts were called upon to interpret Section 31-293a, but did not consider any evidence of the legislative intent as clearly stated in the 1969 House and Senate Proceedings. As a result, the holdings of those cases are inconsistent with the legislative history and intent of the statute. Senate Bill 239 offers a simple, direct solution to this situation by changing the language to reflect this intent.

Finally, while I support the bill, I respectfully request that the bill be modified slightly. The current nullification provision is contained within Section 31-293a under the Workers Compensation Act. Senate Bill 239's new nullification language was removed from Title 31 and instead placed in Title 38a which deals exclusively with automobile policies. In light of the fact that there are multiple insurance policies that may apply to the employee vs. employee exception (such as excess and umbrella), I request that the new language be placed back in Section 31-293a.

Placing the new language back in a single location (Section 31-293a) will make it clearer that it is applicable to all types of policies to reflect the way the insurance marketplace works today. I would also change the language to "No insurance policy" as opposed to "No automobile insurance policy" to be consistent with the legislative history. Without this substitute language, insurers may continue to narrowly interpret the new nullification provision as only being applicable to basic, primary automobile policies. Such an interpretation would effectively defeat the purpose of the proposed legislation.

The following is proposed substitute language for the committee's consideration:

Section 1. Section 31-293a of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2015):

If an employee or [,] in case of his or her death, his or her dependent, has a right to benefits or compensation under this chapter on account of injury or death from injury caused by the negligence or wrong of a fellow employee, such right shall be the exclusive remedy of such injured employee or dependent and no action may be brought against such fellow employee unless such wrong was wilful or malicious or the action is based on the fellow employee's negligence in the operation of a motor vehicle as defined in section 14-1. For purposes of this section, contractors' mobile equipment such as bulldozers, [powershovels] power shovels, rollers, graders or scrapers, farm machinery, cranes, diggers, forklifts, pumps, generators, air

compressors, drills or other similar equipment designed for use principally off public roads are not "motor vehicles" if the claimed injury involving such equipment occurred at the worksite on or after October 1, 1983. [No insurance policy or contract shall be accepted as proof of financial responsibility of the owner and as evidence of the insuring of such person for injury to or death of persons and damage to property by the Commissioner of Motor Vehicles required by chapter 246 if it excludes from coverage under such policy or contract any agent, representative or employee of such owner from such policy or contract. Any provision of such an insurance policy or contract effected after July 1, 1969, which excludes from coverage thereunder any agent, representative or employee of the owner of a motor vehicle involved in an accident with a fellow employee shall be null and void.] No insurance policy shall exclude from coverage any agent, representative or employee of the owner of a motor vehicle as defined in section 14-1, where such agent, representative or employee is negligent in operating the owner's motor vehicle and is involved in an accident with another employee of the owner. Any provision of such a policy that excludes such coverage shall be null and void.

Thank you.

ing of such appeal. The commissioner shall forthwith, after service of notice of any appeal, prepare and file, in said court, a copy of such portions of the record of the case from which such appeal has been taken as may appear to the commissioner to be pertinent to such appeal, with such additions as may be claimed by any party of interest to be essential thereto, certified by the commissioner. The court, upon such appeal in making its determinations as provided in section 8 of this act, shall review, upon the record so certified, the proceedings of the commissioner and examine the question of the legality of the action of the commissioner and the propriety of said action. If, upon hearing such appeal, it appears to the court that any testimony has been improperly excluded by the commissioner or that the facts disclosed by the record are insufficient for the equitable disposition of the appeal, it shall refer the case back to the commissioner to take such evidence as it may direct and report the same to the court, with the commissioner's findings of fact and conclusions of law. Such appeal shall have precedence in the order of trial.

SEC. 10. Any person who knowingly violates any provision of this act shall be liable to the state for the cost of restoration of the affected wetland to its condition prior to such violation insofar as that is possible, and shall forfeit to the state a sum not to exceed one thousand dollars, to be fixed by the court, for each offense. Each violation shall be a separate and distinct offense, and, in the case of a continuing violation, each day's continuance thereof shall be deemed to be a separate and distinct offense. The attorney general, upon complaint of the commissioner, shall institute a civil action to recover such forfeiture. The superior court shall have jurisdiction in equity to restrain a continuing violation of this act at the suit of any person or agency of state or municipal government.

SUBSTITUTE FOR HOUSE BILL NO. 6311.

PUBLIC ACT NO. 696

#### AN ACT CONCERNING WORKMEN'S COMPENSATION.

SECTION 1. The term "occupational disease," as set forth in section 31-275 of the 1967 supplement to the general statutes, is repealed and the following is substituted in lieu thereof: "Occupational disease" [means a] *includes any* disease peculiar to the occupation in which the employee was

engaged and due to causes in excess of the ordinary hazards of employment as such and includes any disease due to or attributable to exposure to or contact with any radioactive material by an employee in the course of his employment.

SEC. 2. Section 31-277 of the 1967 supplement to the general statutes is repealed and the following is substituted in lieu thereof: Each compensation commissioner shall receive an annual salary in an amount equal to that paid to a judge of the court of common pleas [of seventeen thousand five hundred dollars] with his necessary clerical, office and travel expenses as approved by the comptroller; and the chairman of said commission shall receive in addition one thousand dollars annually. Each such commissioner shall devote his entire time to the duties of his office and shall not be otherwise gainfully employed.

SEC. 3. Section 31-280 of the general statutes is repealed and the following is substituted in lieu thereof: (a) There shall continue to be a chairman of the board of compensation commissioners appointed by the governor. The chairman shall prepare the forms used by the commission, shall have custody of the insurance coverage cards, shall prepare and keep a list of self-insurers, shall prepare the annual report to the governor, shall publish, when necessary, bulletins showing the changes in the compensation law, with annotations to the Connecticut cases. [and shall publish the digest of compensation decisions.] Whenever, in the discretion of the chairman of the board of commissioners, the proper dispensation of business in any district requires it, said chairman may appoint from among former workmen's compensation commissioners or qualified members of the bar of this state a person to act as a commissioner at large. Said commissioner at large shall be appointed on a per diem basis and shall be paid on a per diem basis in an amount to be determined by the personnel policy board, and shall have all the powers and duties of the commissioners in each of their respective districts. (b) The chairman, as soon as practicable after April first of each year, shall submit to the comptroller an estimated budget of expenditures for the succeeding fiscal year commencing on July first next. The workmen's compensation commission, for the purposes of administration, shall not expend more than the amounts specified in such estimated budget for each item of expenditure except as authorized by the comptroller. The commission shall include in its annual report to the governor a statement showing the expenses of administering the workmen's compensation act for the preceding fiscal year. (c) The chairman and the comptroller, as soon as practicable after August first in each

year, shall ascertain the total amount of expenses incurred by the commission, including, in addition to the direct cost of personnel services, the cost of maintenance and operation, rentals for space occupied in state leased offices and all other direct and indirect costs, incurred by said commission during the preceding fiscal year in connection with the administration of the workmen's compensation act. An itemized statement of the expenses as so ascertained shall be available for public inspection in the office of the chairman of said commission for thirty days after notice to all insurance carriers, and to all employers permitted to pay compensation directly affected thereby.

SEC. 4. Section 31-293a of the 1967 supplement to the general statutes is repealed and the following is substituted in lieu thereof: If an employee or, in case of his death, his dependent has a right to benefits or compensation under this chapter on account of injury or death from injury caused by the negligence or wrong of a fellow employee, such right shall be the exclusive remedy of such injured employee or dependent and no action may be brought against such fellow employee except for negligence in the operation of a motor vehicle as defined in section 14-1 or unless such wrong was wilful or malicious. No insurance policy or contract shall be accepted as proof of financial responsibility of the owner and as evidence of the insuring of such person for injury to or death of persons and damage to property by the commissioner of motor vehicles required by chapter 246 if it excludes from coverage under such policy or contract any agent, representative or employee of such owner from such policy or contract. Any provision of such an insurance policy or contract effected after the effective date of this act which excludes from coverage thereunder any agent, representative or employee of the owner of a motor vehicle involved in an accident with a fellow employee shall be null and void. [Unless such wrong was wilful or malicious or involves the operation of a motor vehicle.]

SEC. 5. Section 31-307a of said supplement is repealed and the following is substituted in lieu thereof: (a) The weekly compensation rate of each employee entitled to receive benefits under section 31-307 as a result of an injury sustained on or after October 1, [1967] 1969, which totally disables such employee continuously or intermittently for any period extending to the following October first or thereafter shall be adjusted annually as provided herein as of the following October first, and each subsequent October first, to provide such injured employee with a cost-of-living adjustment in his weekly compensation rate as determined as of the date of the injury under

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Amendment is ADOPTED. It is ruled technical and we may proceed with the bill as amended.

MR. BADOLATO: (30th)

Mr. Speaker, Section 1 redefines the definition of occupational disease to cover any individual who might be exposed to radiation in the course of his employment. Section 2 provides for the commissioners to receive the same salary as that of a Judge of the Court of Common Pleas. Section 3 provides that the Chairman of the Commission shall prepare a budget a budget for expenses of administering the Act each year and requires the commissioners to live within the budget. Section 4 is designed to correct the situation which has been created by the insurance carriers/who deliberately refuse to cover the employers with respect to the operation of their vehicles by their employees. This proposal would nullify the provision that does not provide for complete coverage of the employers including the operation of such vehicles by the employers' employees. Section 5 provides for a cost of living adjustment for injured people. For employees injured prior to October 1, 1969, the amount of the adjustment is limited. In effect what is permitted is that these individuals can pick up a maximum of \$15.00 from their prior compensation to 1969. Thereafter they will get the same kind of adjustments as individuals who are injured after October 1, 1969. Section 6 gives the same cost of living increase to anyone who had reached recovery but then suffered a relapse. Section 7 gives a cost of living increase to anyone

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people in these three professions.

THE CHAIR:

Are their further remarks on this bill as amended. If not, as many who are in favor signify by saying aye, opposed. The bill is passed as amended.

THE CLERK:

Calendar No. 1217, File No. 1189. Favorable report of the Joint Standing Committee on Labor on Substitute House Bill No. 6311. An Act concerning Workmen's Compensation as amended by House Amendment Schedule A.

SENATOR MILLER:

Mr. President, I move acceptance of the Joint Committees favorable report and passage of the bill as amended.

THE CHAIR:

Question is on passage of this bill. Will you remark.

SENATOR MILLER:

Mr. President, the original bill called for an increase of twenty-five hundred dollars for the Chairman of the Commission. The House Amendment reduces it back to a thousand dollars and the amendment also limits the benefits to a maximum prevailing rate and some of the important changes are, it adds to the coverage under the act, disease resulting from exposure to radioactive material. It increases the salary of the commission to that of the, commissioners, to that of the common pleas judge. Makes mandatory that no injury insurance policy covering an automobile accident can any longer exclude actions by fellow employees a-

gainst each other and it provides that insurance companies and self insured companies must pay a pro-ratio share in the cost of administrating the act.

THE CHAIR:

Any further remarks on the passage of this bill as amended. If not, as many who are in favor signify by saying aye, opposed. The aye's have it, the bill is passed as amended.

THE CLERK:

Return to Calendar No. 1215, File No. 1164. Favorable report of the Joint Standing Committee on Judiciary and Governmental Functions on Substitute House Bill No. 7690. An Act concerning Releases of Satisfied or Partially Satisfied Mortgages and Liens.

SENATOR PICKETT:

Mr. President, I move for acceptance of the Committees favorable report and passage of the bill.

THE CHAIR:

Question is on passage of this bill. Will you remark.

SENATOR PICKETT:

Mr. President, all too often attorney's who have been trying to attain releases of mortgages or other liens and soforth, have encountered difficulty in obtaining these releases, even upon a bona fide attempt to pay off the encumbrance. By inspecting the statutes we find the fatality for the original grantee for failing to furnish with the release, is merely five dollars per week. The sum totally unrealistic, therefore, we have increased this penalty from five dollars to fifty dollars for each week with a