



# House of Representatives

**File No. 810**

General Assembly

January Session, 2017

**(Reprint of File No. 544)**

House Bill No. 6221  
As Amended by House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
May 31, 2017

**AN ACT CONCERNING RECOVERY OF PAYMENTS FROM  
COLLATERAL SOURCES BY A MUNICIPALITY WITH A SELF-  
INSURED HEALTH PLAN.**

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

1 Section 1. Section 7-464 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2017*):

3 (a) Any town, city or borough may, through its authorized officials,  
4 provide such form or forms of group life, health and accident and  
5 hospital plan benefits for its employees as it deems advisable. Any  
6 town, city or borough that provides health and accident and hospital  
7 plan benefits for its employees may arrange and procure the same  
8 benefits for each active member of a volunteer fire company or  
9 department or volunteer ambulance service or company within such  
10 town, city or borough, provided the member (1) elects coverage under  
11 such plan or plans, (2) pays one hundred per cent of the premium  
12 charged and any additional costs for such coverage, and (3) meets the  
13 requirements for active status set forth by said town, city or borough.

14 (b) If the town, city or borough has less than twenty employees, no  
15 health and accident and hospital plan for such employees may provide  
16 for reduced coverage for any employee who has reached the age of  
17 sixty-five and is eligible for Medicare benefits or any employee's  
18 spouse who has reached age sixty-five and is eligible for Medicare  
19 benefits except to the extent such coverage is provided by Medicare. If  
20 the town, city or borough has twenty or more employees, the terms of  
21 any such plan shall entitle any employee who has attained the age of  
22 sixty-five and any employee's spouse who has attained the age of  
23 sixty-five to group hospital, surgical or medical insurance coverage  
24 under the same conditions as any covered employee or spouse who is  
25 under the age of sixty-five.

26 (c) A self-insured town, city or borough that provides group health  
27 benefits for its employees has a lien on that part of a judgment or  
28 settlement that represents payment for economic loss for medical,  
29 hospital and prescription expenses incurred by its employees and their  
30 covered dependents and family members when such expenses result  
31 from the negligence or recklessness of a third party. The self-insured  
32 town, city or borough may recover such paid health benefits from any  
33 tortfeasor recovery but only upon the following terms and conditions:

34 (1) In no event shall any commercial insurance company which  
35 provides health insurance benefits to the employees of a town, city or  
36 borough and their covered dependents and family members,  
37 including, but not limited to, stop loss insurance beyond a municipal  
38 self-funded medical expense amount, be entitled to any  
39 reimbursement from a tortfeasor recovery. The provisions of this  
40 subsection shall be construed to only permit a self-insured town, city  
41 or borough to recover medical expenses paid from its own revenues.  
42 The provisions of this subsection shall not be construed to permit a  
43 self-insured town, city or borough to recover medical expenses paid  
44 from an insured plan, whether insured in whole or in part.

45 (2) No lien shall exist against any tortfeasor recovery when the self-  
46 insured town, city or borough paid an amount equal to or less than

47 fifteen thousand dollars for medical, hospital and prescription  
48 expenses incurred by its employee, covered dependent or family  
49 member.

50 (3) Any lien permitted under this subsection shall be limited to that  
51 portion of any settlement or judgment that represents payment for  
52 economic loss for medical, hospital and prescription expenses paid as  
53 of the time of settlement or judgment, and reduced as set forth in  
54 subdivision (4) of this subsection.

55 (4) The lien shall be reduced by:

56 (A) Any percentage of comparative negligence attributed to the  
57 employee under section 52-572h;

58 (B) The percentage ratio that the employee's legal fees and costs bear  
59 to the total judgment or settlement recovered; and

60 (C) Application of equitable defenses to the lien amount claimed  
61 including, but not limited to, the make whole doctrine and unjust  
62 enrichment. If agreement cannot be reached on the application of  
63 equitable defenses to the claimed lien amount, then either the  
64 employee, covered dependent, family member or the self-insured  
65 town, city or borough may petition the Superior Court for resolution  
66 on the application of equitable defenses. Any such petition to the  
67 Superior Court shall be heard by a judge of the Superior Court and  
68 shall be privileged for a hearing assignment and any such hearing shall  
69 be held not later than thirty days after the date of filing the application.

70 (5) The lien shall be effective when written notice of the lien is  
71 provided to the employee or his or her attorney but only if written  
72 notice of the lien is provided prior to any settlement or the entry of  
73 judgment. Written notice shall be deemed effective if the group health  
74 plan coverage booklet provided to the employee, covered dependent  
75 or family member contains clear language in conspicuous bold face  
76 font that the employee, covered dependent or family member shall  
77 reimburse the self-insured town, city or borough from any tortfeasor

78 recovery for medical, hospital and prescription expenses paid due to  
79 the negligence of a third party as limited by the provisions of this  
80 subsection.

81 (6) Upon written request from the employee, covered dependent  
82 family member or such individual's attorney after settlement or the  
83 entry of judgment, the self-insured town, city or borough shall have  
84 thirty days to provide the employee or his or her attorney with the  
85 total amount of the lien claimed. If the total amount claimed is not  
86 provided by the self-insured town, city or borough within such thirty-  
87 day period, then the self-insured town, city or borough shall be  
88 deemed to have waived any lien and shall have no further claim of lien  
89 for medical, hospital and prescription expenses paid from the  
90 tortfeasor recovery.

91 (d) As used in subsection (c) of this section: (1) "Self-insured town,  
92 city or borough" means a town, city or borough that provides group  
93 health benefits to its employees by paying submitted medical, hospital  
94 and prescription expense claims from its revenues; and (2) "tortfeasor  
95 recovery" means moneys paid by or on behalf of the person or entity  
96 whose negligence or recklessness caused the injuries for which  
97 medical, hospital and prescription expenses were incurred. "Tortfeasor  
98 recovery" includes claims in negligence or recklessness based upon  
99 wrongful death under section 52-555 and claims based upon negligent  
100 operation of a motor vehicle owned by the state under section 52-556.  
101 "Tortfeasor recovery" does not include any recovery based upon  
102 liability for any torts other than negligence or recklessness, including,  
103 but not limited to, causes of action based upon any provision of the  
104 general statutes, intentional misconduct, and uninsured or  
105 underinsured motorist claims.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2017	7-464

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:**

Municipalities	Effect	FY 18 \$	FY 19 \$
Various Municipalities	Potential Revenue Gain	See Below	See Below

**Explanation**

The bill will result in revenue to self-insured municipalities to the extent that they are able to recover any medical costs incurred on behalf of an injured employee and their covered dependents, paid by the municipality's self-insured policy. The bill is anticipated to result in a revenue gain as opposed to a savings, as any recovery is assumed to be a refund of expenditures already paid. The revenue gain will depend on the amount recovered.

The bill expressly limits the recovery to expenses paid directly from the municipality's own revenue. The municipality is prohibited from recovering for expenses incurred by an insurer who may provide stop-loss coverage for the municipality's self-insured policy. Under the terms of the bill, a municipality is not entitled to recover from a tortfeasor for amounts equal to or less than \$15,000.

The amount a municipality can recover is limited by the following: (1) any percentage of comparative negligence (fault) attributed to the employee, (2) the percentage ratio that the employee's legal fees and costs are relative to the total judgement or settlement, and (3) any

amounts recovered cannot result in an untoward windfall to the municipality. In addition, the bill requires the municipality to comply with the notice provisions of the bill in order for the municipality to be able to have a lien against any recovery from the tortfeasor.

House "A" struck the underlying bill and its associated fiscal impact and resulted in the impact described herein.

***The Out Years***

The fiscal impact in the out years will depend on any amount a self-insured municipality is able to recover in accordance with the terms of the bill.

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**OLR Bill Analysis****HB 6221 (as amended by House "A")\******AN ACT CONCERNING RECOVERY OF PAYMENTS FROM COLLATERAL SOURCES BY A MUNICIPALITY WITH A SELF-INSURED HEALTH PLAN.*****SUMMARY**

This bill gives self-insured towns, cities, and boroughs ("municipalities") a lien on the part of certain judgments or settlements to an employee or his or her covered dependent or family member ("insureds") for medical, hospital, and prescription expenses incurred due to a third party's negligence or recklessness. The lien only applies to certain types of "tortfeasor recoveries" and instances when a municipality incurs more than \$15,000 in medical, hospital, and prescription expenses.

With some exceptions, current law prohibits insurers and others providing health benefits from recovering the cost of such benefits from a defendant or anyone else as a result of a personal injury or wrongful death suit or action, regardless of whether it is resolved by settlement or judgment (CGS § 52-225c).

\*House Amendment "A" replaces the underlying bill with provisions that also authorize self-insured municipalities to recover the cost of health expenses incurred on behalf of insureds, under certain circumstances.

EFFECTIVE DATE: October 1, 2017

**DEFINITIONS**

Under the bill, a municipality is "self-insured" if it provides group health benefits to its employees by paying submitted medical, hospital, and prescription expense claims from its revenues.

A “tortfeasor recovery” that may be subject to a lien is moneys paid by or on behalf of the person or entity whose negligence or recklessness caused the injuries for which medical, hospital, and prescription expenses were incurred. It includes recoveries from wrongful death suits alleging negligence or recklessness and claims alleging the negligent operation of a state-owned motor vehicle. But it excludes recoveries based on torts other than negligence or recklessness, including those related to causes of action based on state statute, intentional misconduct, and uninsured or underinsured motorist claims.

### **NOTIFYING INSUREDS**

***Right to Recover Expenses.*** For a lien to be effective under the bill, a municipality must provide written notice of it to the insured or his or her counsel before settlement or a judgment’s entry. A municipality can meet this notice requirement by including clear language in conspicuous bold face font in its group health plan coverage booklet notifying insureds that they must reimburse the municipality from a tortfeasor recovery for any medical, hospital, and prescription expenses incurred due to a third party’s negligence.

***Amount Claimed.*** Under the bill, if the insured or his or her attorney makes a written request to the municipality after settlement or a judgment’s entry, the municipality must disclose within 30 days the total amount of the lien claimed. If a municipality does not provide this information in a timely manner, it waives the lien and has no further right to claim a portion of the tortfeasor recovery as reimbursement for medical, hospital, and prescription expenses incurred.

### **CALCULATING THE LIEN AMOUNT**

The bill limits a lien’s amount to the medical, hospital, and prescription expenses incurred at the time of settlement or judgement. The amount must be further reduced by:

1. the percentage of comparative negligence attributed to the



- municipal employee under the statute concerning negligence liability in cases where there are multiple tortfeasors;
2. the percentage ratio that the employee's legal fees and costs bear to the total judgement or settlement; and
  3. application of equitable defenses, including the make whole doctrine and unjust enrichment.

Under the bill, if the parties cannot agree on the application of equitable defenses, the insured or municipality may petition the superior court for assistance in resolving the issue. Such a petition is privileged with regard to hearing assignment and must be heard by a superior court judge within 30 days of the petition's filing.

#### **ADDITIONAL LIMITATIONS**

The bill specifies that the right to a lien does not extend to commercial insurance companies that provide health insurance benefits to municipal employees and their dependents and family members, including stop loss insurance. Similarly, self-insured municipalities cannot recover medical expenses paid from an insured plan, whether fully or partially insured.

#### **BACKGROUND**

##### ***Related Bill***

SB 885 (File 709), reported favorably by the Judiciary Committee, contains a related provision.

#### **COMMITTEE ACTION**

Planning and Development Committee

Joint Favorable

Yea 21      Nay 0      (03/24/2017)