

House of Representatives, March 9, 1998. The Committee on Labor and Public Employees reported through REP. DONOVAN, 84th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING COLLECTIVELY BARGAINED WORKERS' COMPENSATION PROGRAMS.

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

1 Section 31-285 of the general statutes is
2 repealed and the following is substituted in lieu
3 thereof:

4 (a) With the approval of the state Insurance
5 Commissioner, any employer may enter into an
6 agreement with his employees to provide a system
7 of compensation, benefit and insurance in lieu of
8 the compensation and insurance provided by this
9 chapter. No such substitute system shall be
10 approved unless it confers benefits upon injured
11 employees at least equivalent to the benefits
12 provided by this chapter, nor shall any such
13 substitute system be approved which contains an
14 obligation of employees to join in it as a
15 condition of employment unless it contains
16 equitable provision for the withdrawal of
17 employees from it and the distribution of its
18 assets. If any such system requires contributions
19 from employees, it shall not be approved unless it
20 confers benefits in addition to those provided
21 under this chapter at least commensurate with such
22 contributions. The Insurance Commissioner, having

23 given his approval of such substitute system,
24 shall have over it all the jurisdiction given him
25 by sections 38a-14 and 38a-17 over insurance
26 companies. He may withdraw his approval upon
27 reasonable notice to the employer and order a
28 distribution of the assets, subject to the right
29 of any party in interest to take an appeal to the
30 superior court for the judicial district of
31 Hartford-New Britain*.

32 (b) (1) FOR PURPOSES OF THIS SUBSECTION AND
33 SUBSECTIONS (c) TO (g), INCLUSIVE, OF THIS
34 SECTION, "EMPLOYER" MEANS A CONSTRUCTION
35 CONTRACTOR WHO HAS A WORKERS' COMPENSATION
36 INSURANCE POLICY IN WHICH AT LEAST FIFTY PER CENT
37 OF THE PREMIUM IS ATTRIBUTABLE TO CONSTRUCTION
38 CLASSIFICATIONS.

39 (2) FROM THE EFFECTIVE DATE OF THIS ACT TO
40 OCTOBER 1, 2003, AN EMPLOYER AND A RECOGNIZED OR
41 CERTIFIED EXCLUSIVE BARGAINING REPRESENTATIVE OF
42 ITS EMPLOYEES MAY INCLUDE WITHIN THEIR COLLECTIVE
43 BARGAINING AGREEMENT PROVISIONS TO ESTABLISH AN
44 ALTERNATIVE DISPUTE RESOLUTION SYSTEM TO RESOLVE
45 CLAIMS ARISING UNDER THIS CHAPTER. ANY COLLECTIVE
46 BARGAINING AGREEMENT OR AGREEMENT ENTERED INTO BY
47 THE EMPLOYEE AND AN EMPLOYER WHICH PURPORTS TO
48 PREEMPT ANY PROVISION OF THIS CHAPTER OR IN ANY
49 WAY DIMINISHES OR CHANGES THE RIGHTS AND BENEFITS
50 PROVIDED UNDER THIS CHAPTER, EXCEPT AS EXPRESSLY
51 PROVIDED IN THIS SUBSECTION AND SUBSECTIONS (c) TO
52 (g), INCLUSIVE, OF THIS SECTION, SHALL BE
53 UNENFORCEABLE.

54 (c) EXCEPT AS SPECIFICALLY PROVIDED IN
55 SUBSECTIONS (b) TO (g), INCLUSIVE, OF THIS
56 SECTION, NOTHING IN SAID SUBSECTIONS OR ANY
57 COLLECTIVE BARGAINING AGREEMENT PROVIDING FOR AN
58 ALTERNATIVE DISPUTE RESOLUTION SYSTEM FOR THE
59 RESOLUTION OF CLAIMS ARISING UNDER THIS CHAPTER
60 SHALL PREEMPT ANY PROVISION OF THIS CHAPTER OR IN
61 ANY WAY DIMINISH OR CHANGE ANY BENEFITS TO WHICH
62 AN EMPLOYEE, OR HIS OR HER DEPENDENTS, OR
63 SURVIVORS MAY BE ENTITLED PURSUANT TO THE
64 PROVISIONS OF THIS CHAPTER.

65 (d) THE COLLECTIVE BARGAINING AGREEMENT MAY
66 ESTABLISH THE FOLLOWING OBLIGATIONS AND
67 PROCEDURES:

68 (1) AN ALTERNATIVE DISPUTE RESOLUTION PROCESS
69 TO RESOLVE CLAIMS ARISING UNDER THIS CHAPTER,

70 WHICH MAY INCLUDE, BUT SHALL NOT BE LIMITED TO,
71 MEDIATION OR ARBITRATION;

72 (2) THE USE OF AN AGREED MANAGED CARE
73 ORGANIZATION OR A LIST OF AUTHORIZED PROVIDERS FOR
74 MEDICAL TREATMENT, WHICH MAY BE THE EXCLUSIVE
75 SOURCE OF ALL MEDICAL AND RELATED TREATMENT
76 PROVIDED UNDER THIS CHAPTER;

77 (3) THE USE OF AN AGREED LIST OF AUTHORIZED
78 PROVIDERS FOR THE PURPOSE OF PROVIDING MEDICAL
79 OPINIONS AND TESTIMONY, WHICH MAY BE THE EXCLUSIVE
80 SOURCE OF ALL SUCH MEDICAL OPINIONS AND TESTIMONY
81 UNDER THIS CHAPTER;

82 (4) BENEFITS FOR INJURED WORKERS, THEIR
83 DEPENDENTS OR THEIR SURVIVORS SUPPLEMENTAL TO
84 THOSE PROVIDED UNDER THIS CHAPTER;

85 (5) A LIGHT DUTY, MODIFIED JOB OR RETURN TO
86 WORK PROGRAM;

87 (6) A VOCATIONAL REHABILITATION OR RETRAINING
88 PROGRAM; AND

89 (7) WORKER INJURY AND ILLNESS PREVENTION
90 PROGRAMS AND PROCEDURES.

91 (e) THE DETERMINATION OF AN ARBITRATOR OR
92 MEDIATOR PURSUANT TO AN ALTERNATIVE DISPUTE
93 RESOLUTION PROCEDURE PERTAINING TO THE RESOLUTION
94 OF CLAIMS ARISING UNDER THIS CHAPTER SHALL NOT BE
95 REVIEWABLE BY THE COMMISSIONER. ANY PARTY
96 AGGRIEVED BY SUCH DETERMINATION MAY APPEAL TO THE
97 APPELLATE COURT.

98 (f) (1) DETERMINATIONS RENDERED AS A RESULT
99 OF AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE
100 SHALL REMAIN IN FORCE DURING A PERIOD IN WHICH THE
101 EMPLOYER AND A RECOGNIZED OR CERTIFIED EXCLUSIVE
102 BARGAINING REPRESENTATIVE ARE RENEGOTIATING A
103 COLLECTIVE BARGAINING AGREEMENT.

104 (2) UPON THE EXPIRATION OF A COLLECTIVE
105 BARGAINING AGREEMENT THAT CONTAINS A PROVISION FOR
106 AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE FOR
107 CLAIMS ARISING UNDER THIS CHAPTER, THE RESOLUTION
108 OF CLAIMS RELATING TO INJURIES SUSTAINED AS A
109 RESULT OF A WORK-RELATED ACCIDENT OR OCCUPATIONAL
110 DISEASE MAY, IF THE COLLECTIVE BARGAINING
111 AGREEMENT SO PROVIDES, BE SUBJECT TO THE TERMS AND
112 CONDITIONS SET FORTH IN THE EXPIRED COLLECTIVE
113 BARGAINING AGREEMENT UNTIL THE EMPLOYER AND A
114 RECOGNIZED OR CERTIFIED EXCLUSIVE BARGAINING
115 REPRESENTATIVE NEGOTIATE A NEW COLLECTIVE
116 BARGAINING AGREEMENT.

117 (3) UPON THE TERMINATION OF A COLLECTIVE
118 BARGAINING AGREEMENT WHICH IS NOT SUBJECT TO
119 RENEGOTIATION, THE EMPLOYER AND ITS EMPLOYEES
120 SHALL BECOME FULLY SUBJECT TO THE PROVISIONS OF
121 THIS CHAPTER TO THE SAME EXTENT AS THEY WERE PRIOR
122 TO THE IMPLEMENTATION OF THE COLLECTIVE BARGAINING
123 AGREEMENT, PROVIDED, WHEN A CLAIM OR MATTER HAS
124 BEEN ADJUDICATED UNDER THE ALTERNATIVE DISPUTE
125 RESOLUTION PROCEDURE, THE CLAIMANT OR EMPLOYER TO
126 SUCH CLAIM OR MATTER SHALL BE ESTOPPED FROM
127 RAISING IDENTICAL ISSUES BEFORE THE COMMISSIONER.

128 (g) ON OCTOBER 1, 1998, AND ANNUALLY
129 THEREAFTER, THE EMPLOYER SHALL FILE A COPY OF THE
130 COLLECTIVE BARGAINING AGREEMENT WITH THE CHAIRMAN
131 OF THE WORKERS' COMPENSATION COMMISSION AND SHALL
132 REPORT THE NUMBER OF EMPLOYEES SUBJECT TO SUCH
133 AGREEMENT. THE CHAIRMAN SHALL (1) REVIEW THE
134 COLLECTIVE BARGAINING AGREEMENT FOR COMPLIANCE
135 WITH THE PROVISIONS OF SUBSECTIONS (c) TO (g),
136 INCLUSIVE, OF THIS SECTION, (2) NOTIFY THE PARTIES
137 TO THE AGREEMENT IF THE AGREEMENT IS NOT IN
138 COMPLIANCE AND (3) IF NECESSARY, RECOMMEND
139 APPROPRIATE ACTION TO BRING THE AGREEMENT INTO
140 COMPLIANCE.

141 LAB COMMITTEE VOTE: YEA 7 NAY 3 JFS

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF 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 HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER SHB 5253

STATE IMPACT Potential Savings and Minimal Cost, Can Be Absorbed (Workers' Compensation Fund), see explanation below

MUNICIPAL IMPACT None

STATE AGENCY(S) Workers' Compensation Commission

EXPLANATION OF ESTIMATES:

STATE IMPACT: The passage of this bill could result in both potential savings and in minimal, absorbable costs to the Workers' Compensation Commission (Workers' Compensation Fund). The bill allows construction contractor employers and the employee unions to negotiate an alternative dispute resolution system to resolve workers' compensation claims as part of a collective bargaining agreement. The bill allows this to occur between 10/1/98 and 10/1/03. Such agreements cannot provide a lesser benefit than under the workers' compensation law. Each October 1st, all such agreements must be filed with the Chairman of the Workers' Compensation Commission who must review them for compliance with the bill and make recommendations to remedy the problems.

The number of such agreements that will be made cannot be determined at this time. To the extent that alternative dispute resolution systems are used instead of the Workers' Compensation Commission, fewer cases and fewer hearings would occur. The potential savings cannot be determined at this time. The review of such plans by the Chairman would result in minimal

additional costs that would be absorbed within existing resources.

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OLR BILL ANALYSIS

SHB 5253

AN ACT CONCERNING COLLECTIVELY BARGAINED WORKERS' COMPENSATION PROGRAMS

SUMMARY: This bill, between October 1, 1998 and October 1, 2003, allows construction contractor employers and unions representing their employees to negotiate an alternative dispute resolution system to resolve workers' compensation claims as part of a collective bargaining agreement. If agreed to, it makes the alternative system the exclusive method of resolving such claims for the covered employer and his employees. The decisions of an arbitrator or mediator under such a system are not reviewable by a workers' compensation commissioner and are appealable only to the Appellate Court.

The bill explicitly allows construction contractor employers and unions to negotiate (1) an agreed managed care organization or list of medical providers as the exclusive source of medical treatment for work-related injuries, (2) an agreed list of medical providers to provide exclusive medical opinions and testimony, (3) benefits for injured workers and dependents that exceed those required by law, (4) light or modified duty or return-to-work programs, (5) vocational rehabilitation and retraining programs, and (6) worker injury and illness prevention programs. Such items are already negotiable under current collective bargaining laws.

Agreements are not allowed to diminish or change the statutory benefits available to an employee or his dependents under the workers' compensation law.

Each year starting October 1, 1998, the bill requires construction contractor employers to file copies of any such agreements with the Workers' Compensation Commission chairman and report the number of employees subject to them. The chairman must review the agreements for compliance with the bill, notify the

parties of any provisions that do not comply, and recommend appropriate action to remedy the agreement.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

Employer Defined

The bill defines "employer" as a construction contractor having a workers' compensation insurance policy in which at least 50% of the premium is attributable to employees in construction classifications.

Renegotiation

The bill requires that decisions rendered under an alternative dispute resolution system remain in force while the parties are renegotiating a collective bargaining agreement.

Expiration

The bill allows the agreement to provide that the provisions dealing with workers' compensation claims resolution continue in effect when an agreement expires and that the terms and conditions of the expired agreement apply until a new contract is negotiated.

Termination

If the agreement terminates and is not subject to renegotiation, the bill requires the employer and employees to revert to the procedures of the workers' compensation law. But if a claim or matter has been decided under the alternative dispute resolution procedure, neither party may raise the identical issue later with a workers' compensation commissioner.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute
Yea 7 Nay 3