



Senate Bill No. 907

Public Act No. 21-18

AN ACT CONCERNING MINOR AND TECHNICAL CHANGES TO THE WORKERS' COMPENSATION ACT.

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

Section 1. (NEW) (*Effective October 1, 2021*) (a) (1) Wherever the words "workers' compensation commissioner", "compensation commissioner" or "commissioner" are used to denote a workers' compensation commissioner in the following sections of the general statutes, the words "administrative law judge" shall be substituted in lieu thereof: 4-186, 5-170, 5-192h, 17b-341, 19a-641, 28-14, 29-4a, 31-275, 31-276, 31-277, 31-278, 31-279, 31-280, 31-280a, as amended by this act, 31-280b, 31-282, 31-283, 31-283d, 31-283e, 31-283f, as amended by this act, 31-284c, 31-286, 31-286a, 31-286b, 31-288, 31-289a, 31-290a, 31-293, 31-294b, 31-294c, 31-294d, 31-294e, 31-294f, 31-296, 31-296a, 31-297, 31-297a, 31-298, as amended by this act, 31-299, 31-299a, 31-299b, 31-300, 31-301, 31-301c, 31-301d, 31-302, 31-306, 31-306b, 31-307a, 31-308, 31-308a, 31-310, 31-312, 31-313, 31-315, 31-316, 31-318, 31-321, 31-323, 31-326, 31-327, 31-329, 31-341, 31-342, 31-343, 31-349, as amended by this act, 31-349b, 31-349c, 31-353, 31-355, 38a-470, 38a-500, 38a-527, 46b-231, 51-49, 51-49a, 51-49b, 51-49c, 51-49d, 51-49g, 51-49h, 51-49i, 51-49j, 51-50, 51-50a, 51-50b, 51-51, 51-51h, 51-51i, 51-51k, 51-51l, 51-51m, 51-51n, 51-51o, 51-51p, 51-51q, 51-51r, 51-51s, 51-63 and 52-149a.

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(2) Wherever the words "workers' compensation commissioner", "compensation commissioner" or "commissioner" are used to denote a workers' compensation commissioner in any public act of the 2021 session, the words "administrative law judge" shall be substituted in lieu thereof.

(b) The Legislative Commissioners' Office shall, in codifying said sections of the general statutes pursuant to subdivision (1) of subsection (a) of this section or any public act of the 2021 session pursuant to subdivision (2) of subsection (a) of this section, make such technical, grammatical and punctuation changes as are necessary to carry out the purposes of this section.

Sec. 2. Subsection (c) of section 31-280a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(c) The advisory board shall meet at least [~~twice~~] once in each calendar quarter and at such other times as the chairman or the chairman of the Workers' Compensation Commission deem necessary. All actions of the advisory board shall require the affirmative vote of six members of the advisory board. The advisory board may bring any matter related to the operation of the workers' compensation system to the attention of the chairman of the Workers' Compensation Commission. The advisory board may adopt any rules of procedure that the board deems necessary to carry out its duties under this chapter.

Sec. 3. Subsection (a) of section 31-283f of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(a) A Statistical Division shall be established within the Workers' Compensation Commission. The division shall compile and maintain statistics concerning occupational injuries and diseases, voluntary

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agreements, status of claims and commissioners' dockets. [The division shall be administered by a full-time salaried director who shall be appointed by the chairman of the Workers' Compensation Commission under the provisions of chapter 67. The director shall report to the chairman.]

Sec. 4. Section 31-298 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

Both parties may appear at any hearing, either in person or by attorney or other accredited representative, and no formal pleadings shall be required, beyond any informal notices that the commission approves. In all cases and hearings under the provisions of this chapter, the commissioner shall proceed, so far as possible, in accordance with the rules of equity. He shall not be bound by the ordinary common law or statutory rules of evidence or procedure, but shall make inquiry, through oral testimony, deposition testimony or written and printed records, in a manner that is best calculated to ascertain the substantial rights of the parties and carry out the provisions and intent of this chapter. No fees shall be charged to either party by the commissioner in connection with any hearing or other procedure, but the commissioner shall furnish at cost (1) certified copies of any testimony, award or other matter which may be of record in his office, and (2) duplicates of audio [cassette] recordings of any formal hearings. Witnesses subpoenaed by the commissioner shall be allowed the fees and traveling expenses that are allowed in civil actions, to be paid by the party in whose interest the witnesses are subpoenaed. When liability or extent of disability is contested by formal hearing before the commissioner, the claimant shall be entitled, if he prevails on final judgment, to payment for oral testimony or deposition testimony rendered on his behalf by a competent physician, surgeon or other medical provider, including the stenographic and videotape recording costs thereof, in connection with the claim, the commissioner to determine the reasonableness of such

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charges.

Sec. 5. Section 31-349 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

[(a)] The fact that an employee has suffered a previous disability, shall not preclude him from compensation for a second injury, nor preclude compensation for death resulting from the second injury. If an employee having a previous disability incurs a second disability from a second injury resulting in a permanent disability caused by both the previous disability and the second injury which is materially and substantially greater than the disability that would have resulted from the second injury alone, he shall receive compensation for (1) the entire amount of disability, including total disability, less any compensation payable or paid with respect to the previous disability, and (2) necessary medical care, as provided in this chapter, notwithstanding the fact that part of the disability was due to a previous disability. For purposes of this [subsection] section, "compensation payable or paid with respect to the previous disability" includes compensation payable or paid pursuant to the provisions of this chapter, as well as any other compensation payable or paid in connection with the previous disability, regardless of the source of such compensation.

[(b)] As a condition precedent to the liability of the Second Injury Fund, the employer or its insurer shall: (1) Notify the custodian of the fund by certified mail no later than three calendar years after the date of injury or no later than ninety days after completion of payments for the first one hundred and four weeks of disability, whichever is earlier, of its intent to transfer liability for the claim to the Second Injury Fund; (2) include with the notification (A) copies of all medical reports, (B) an accounting of all benefits paid, (C) copies of all findings, awards and approved voluntary agreements, (D) the employer's or insurer's estimate of the reserve amount to ultimate value for the claim, (E) a two-thousand-dollar notification fee payable to the custodian to cover the

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fund's costs in evaluating the claim proposed to be transferred and (F) such other material as the custodian may require. The employer by whom the employee is employed at the time of the second injury, or its insurer, shall in the first instance pay all awards of compensation and all medical expenses provided by this chapter for the first one hundred four weeks of disability. Failure on the part of the employer or an insurer to comply does not relieve the employer or insurer of its obligation to continue furnishing compensation under the provisions of this chapter. The custodian of the fund shall, by certified mail, notify a self-insured employer or an insurer, as applicable, of the rejection of the claim within ninety days after receiving the completed notification. Any claim which is not rejected pursuant to this section shall be deemed accepted, unless the custodian notifies the self-insured employer or the insurer within the ninety-day period that up to an additional ninety days is necessary to determine if the claim for transfer will be accepted. If the claim is accepted for transfer, the custodian shall file with the workers' compensation commissioner for the district in which the claim was filed, a form indicating that the claim has been transferred to the Second Injury Fund and the date that such claim was transferred and shall refund fifteen hundred dollars of the notification fee to the self-insured employer or the insurer, as applicable. A copy of the form shall be mailed to the self-insured employer or the insurer and to the claimant. No further action by the commissioner shall be required to transfer said claim. If the custodian rejects the claim of the employer or its insurer, the question shall be submitted by certified mail within thirty days of the receipt of the notice of rejection by the employer or its insurer to the commissioner having jurisdiction, and the employer or insurer shall continue furnishing compensation until the outcome is finally decided. Claims not submitted to the commissioner within said time period shall be deemed withdrawn with prejudice. If the employer or insurer prevails, or if the custodian accepts the claim all payments made beyond the one-hundred-four-week period shall be reimbursed to the employer or insurer by the Second Injury Fund.

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(c) If the second injury of an employee results in the death of the employee, and it is determined that the death would not have occurred except for a preexisting permanent physical impairment, the employer or its insurer shall, in the first instance, pay the funeral expense described in this chapter, and shall pay death benefits as may be due for the first one hundred four weeks. The employer or its insurer may thereafter transfer liability for the death benefits to the Second Injury Fund in accordance with the procedures set forth in subsection (b) of this section.

(d) Notwithstanding the provisions of this section, no injury which occurs on or after July 1, 1995, shall serve as a basis for transfer of a claim to the Second Injury Fund under this section. All such claims shall remain the responsibility of the employer or its insurer under the provisions of this section.

(e) All claims for transfer of injuries for which the fund has been notified prior to July 1, 1995, shall be deemed withdrawn with prejudice, unless the employer or its insurer notifies the custodian of the fund by certified mail prior to October 1, 1995, of its intention to pursue transfer pursuant to the provisions of this section. No notification fee shall be required for notices submitted pursuant to this subsection. This subsection shall not apply to notices submitted prior to July 1, 1995, in response to the custodian's request, issued on March 15, 1995, for voluntary resubmission of notices.

(f) No claim, where the custodian of the Second Injury Fund was served with a valid notice of intent to transfer under this section, shall be eligible for transfer to the Second Injury Fund unless all requirements for transfer, including payment of the one hundred and four weeks of benefits by the employer or its insurer, have been completed prior to July 1, 1999. All claims, pursuant to this section, not eligible for transfer to the fund on or before July 1, 1999, will remain the responsibility of the employer or its insurer.]

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Sec. 6. Subsection (a) of section 31-354 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(a) There shall be a fund to be known as the Second Injury Fund. Each employer, other than the state, shall, within thirty days after notice given by the State Treasurer, pay to the State Treasurer for the use of the state a sum in payment of his liability under this chapter which shall be calculated in accordance with the Second Injury Fund surcharge base, as defined in section 31-349g, [and shall be assessed in accordance with subsection (f) of section 31-349,] sections 31-349g, 31-349h and 31-349i, this section, section 31-354b and sections 8 and 9 of public act 96-242. Such sum shall be an amount sufficient to (1) pay the debt service on state revenue bond obligations authorized to be issued under and for the purposes set forth in section 31-354b including reserve and covenant coverage requirements, (2) provide for costs and expenses of operating the Second Injury Fund, and (3) pay Second Injury Fund stipulations on claims settled by the custodian or other benefits payable out of the Second Injury Fund and not funded through state revenue bond obligations and shall be determined in accordance with the regulations adopted pursuant to the provisions of section 31-349g. The custodian shall establish a factor for the annual surcharge that caps such surcharge for the fiscal years ending June 30, 1996, 1997 and 1998. In determining such factor the custodian shall consider the funding mechanism authorized by [subsection (f) of section 31-349,] sections 31-349g, 31-349h and 31-349i, this section, section 31-354b and sections 8 and 9 of public act 96-242, recognize that an acceptable level of employer assessment is important to the vitality of the economy of the state and nevertheless shall assure provision of services to injured workers that enhances their ability to return to work and improve their quality of life. In any event, such factor shall not exceed, with respect to insured employers, a rate of fifteen per cent on the Second Injury Fund surcharge base with respect to workers' compensation and employers'

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liability policies and, with respect to self-insured employers, a comparable percentage limitation representing their pro rata share of any assessment. Any employer or any insurance company acting as collection agent for the custodian of the Second Injury Fund who fails to pay in accordance with such regulations shall pay a penalty to the State Treasurer of fifteen per cent on the unpaid assessment or surcharge or fifty dollars, whichever is greater. Interest at the rate of six per cent per annum shall be charged on any amounts owed on assessment audits or surcharge audits. For self-insured employers interest shall accrue thirty days after notice from the Second Injury Fund of the unpaid audit assessment. For insurance companies, the interest shall accrue from the date of the notice of audit errors or deficiencies as determined by the date postmarked by the United States Postal Service. The State Treasurer shall notify each employer of the penalty or interest provision with the notice of assessment. Any partial payments made to the fund shall be first applied to any unpaid penalty, then to any unpaid interest and the remainder, if any, to the unpaid assessment or surcharge. Interest or penalties shall be applied if assessment or surcharge reports or payments are postmarked by the United States Postal Service after the designated due date. The sums received shall be accounted for separately and apart from all other state moneys and the faith and credit of the state of Connecticut is pledged for their safekeeping. The State Treasurer shall be the custodian of the fund and all disbursements from the fund shall be made by the Treasurer or the Treasurer's deputies. The moneys of the fund shall be invested by the Treasurer in accordance with applicable law and section 8 of public act 96-242. Interest, income and dividends from the investments shall be credited to the fund. Each employer, each private insurance carrier acting on behalf of any employer and each interlocal risk management agency acting on behalf of any employer shall annually, on or before April first, report to the State Treasurer, in the form prescribed by the State Treasurer, the amount of money expended by or on behalf of the employer in payments for the preceding calendar year. Each private insurance

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carrier, each self-insurance group and each interlocal risk management agency shall submit annually, on or before April first, to the State Treasurer, in the form prescribed by the State Treasurer, a report of the total Second Injury Fund surcharge base collected in the preceding calendar year and a report of the projected total Second Injury Fund surcharge base for the current calendar year. The fund shall be used to provide the benefits set forth in section 31-306 for adjustments in the compensation rate and payment of certain death benefits, in section 31-307b for adjustments where there are relapses after a return to work, in section 31-307c for totally disabled persons injured prior to October 1, 1953, in section 31-349, as amended by this act, for disabled or handicapped employees and in section 31-355 for the payment of benefits due injured employees whose employers or insurance carriers have failed to pay the compensation, and medical expenses required by this chapter, or any other compensation payable from the fund as may be required by any provision contained in this chapter or any other statute and to reimburse employers or insurance carriers for payments made under subsection (b) of section 31-307a. The assessment required by this section is a condition of doing business in this state and failure to pay the assessment, when due, shall result in the denial of the privilege of doing business in this state or to self-insure under section 31-284. Any administrative or other costs or expenses incurred by the State Treasurer in connection with carrying out the provisions of this part, including the hiring of necessary employees, shall be paid from the fund. The State Treasurer may adopt regulations, in accordance with the provisions of chapter 54, prescribing the practices, policies and procedures to be followed in the administration of the Second Injury Fund.

Sec. 7. Subsection (a) of section 31-355a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

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(a) Whenever the Second Injury Fund is required, pursuant to section 31-355, [or subsection (c) of section 31-349,] to pay benefits or compensation mandated by the provisions of this chapter for any employer or insurer who fails or is unable to make such payments, the amount so paid by the fund shall be collectible by any means provided by law for the collection of any tax due the state of Connecticut or any subdivision thereof, including any means provided by section 12-35. Tax warrants referred to in said section 12-35 may be signed by the State Treasurer.

Sec. 8. Sections 31-276a, 31-298a and 31-304 of the general statutes are repealed. (*Effective October 1, 2021*)

Approved May 26, 2021