

A Guide *to* 1996 Workers' Compensation Reform Legislation



*State of Connecticut
Workers' Compensation Commission
John A. Mastropietro, Chairman*

PREFACE

The Spring 1996 legislative session of the Connecticut General Assembly produced ten Public Acts which affect, change, or add to the Connecticut General Statutes, as they pertain to workers' compensation and related benefits and the operation of the state's workers' compensation system. A number of these are relatively small in scope, while there are several which affect the system in more dramatic ways.

All of these Public Acts were passed by the end of the legislative session, and have been signed by Governor John G. Rowland. Each Act becomes effective on a specific date, as indicated in this pamphlet. Only provisions affecting workers' compensation and related topics are covered here; unrelated legislation contained in the Public Acts is not included in this pamphlet.

I hope that this "*Guide*" will assist you in understanding this year's workers' compensation and related legislation. If, however, you need more information or clarification, the Workers' Compensation Commission will be happy to provide you with further assistance. Please contact your local Commission District Office or the Commission's Education Services with any questions you may have.

John A. Mastropietro, Chairman
State of Connecticut
Workers' Compensation Commission

NOTE

This informational “*Guide*” has been developed by the State of Connecticut Workers’ Compensation Commission as a public service to assist those involved in the state’s workers’ compensation system in understanding the 1996 legislation which affects, changes, and adds to our workers’ compensation and related statutes.

The material presented herein is for informational purposes only. It does not constitute the language of the law, nor does it function as a substitute for the law.

In the application of law, the Connecticut General Statutes, the Connecticut Administrative Regulations, and the decisions of our courts and administrative agencies pertaining to the statutes and regulations prevail as the authoritative sources.

HOW TO OBTAIN A PUBLIC ACT

For a copy of any of the Public Acts described in this pamphlet, you may contact the Legislative Bill Room, Connecticut State Library, 231 Capitol Avenue, Hartford, CT 06106; telephone (860) 566-5736; fax (860) 566-2133. Single copies are provided at no charge and can be mailed or picked up. (*NOTE: Some charges may apply for fax transmissions and special requests including express delivery.*)

Copies of the Public Acts described in this pamphlet are NOT available from the Workers’ Compensation Commission.

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PUBLIC ACT NO. 96-65 (*Substitute House Bill No. 5476*)

An Act Allowing Civil Actions Against Employers Who Fail To Carry Workers' Compensation Insurance

Public Act 96-65:

- was signed by Governor Rowland on May 9, 1996
- becomes effective on October 1, 1996
- modifies the following Connecticut General Statutes:
 - 31-284
 - 31-293

Public Act 96-65 repeals the “exclusive remedy” of the Workers’ Compensation Act for injured employees of uninsured employers. It also repeals a monetary penalty for an employer’s noncompliance with the state’s workers’ compensation insurance requirements, allows the state’s Second Injury Fund to participate in “third party” actions, and makes a few technical changes to make the statutes conform to the new uninsured employer provisions in this Act.

Repeal of “Exclusive Remedy” of WC Act for Uninsured Employers [PA 96-65, §1]

Subsection (b) of Section 31-284 of the Connecticut General Statutes is amended to allow an employee to sue his or her employer for damages relating to a work-related injury or death resulting from such an injury, if the employer IS NOT properly insured for workers’ compensation according to state law.

The only exception to this new provision is that, if the injured individual held himself out to the uninsured employer as an independent contractor and the uninsured employer, in good faith, relied on that representation (as well as other indicia of such status) and accordingly classified the individual as an independent contractor, THEN the uninsured employer IS NOT LIABLE under this section for damages outside of the Workers’ Compensation Act.

WC Act still the “Exclusive Remedy” for Insured Employers [PA 96-65, §1]

Subsection (a) of Section 31-284 of the Connecticut General Statutes states that, for any work-related injury to an employee whose employer IS properly insured for workers’ compensation ac-

According to state law, such an employee may continue to receive compensation benefits ONLY as provided by the Workers' Compensation Act.

An injured employee, or his dependents, CANNOT sue his employer for a work-related injury or death, IF the employer IS properly insured for workers' compensation according to state law.

Employer Penalty for Noncompliance Repealed [PA 96-65, §1]

This Act also amends subsection (b) of Section 31-284 of the Connecticut General Statutes to repeal a \$1,000 fine on employers for not complying with the state's workers' compensation insurance requirements. HOWEVER, there is still a fine for this: Section 2 of Public Act 96-216 (*see page 11 of this pamphlet*) increases the fine from \$1,000 (repealed in this Act) to the much greater fines provided for in Section 31-288 of the Connecticut General Statutes, which can be as high as \$50,000.

Second Injury Fund Allowed to Participate in "Third Party" Actions. [PA 96-65, §2]

This Act amends subsection (a) of Section 31-293 of the Connecticut General Statutes to now allow the custodian of the state's Second Injury Fund to join in an employee's or employer's action against a "third party" or to bring such an action himself against a "third party" as defined in this Act, if the Fund has paid or become obligated to pay compensation to the injured employee. (*Previously, only employers were statutorily allowed to join in these "third party" actions.*)

As a result of this new provision, the injured employee is now required, when suing a "third party" as defined by this Act, to include in his or her complaint the amount of any compensation paid by the Second Injury Fund and the amounts of any probable future payments by the Fund. (*Previously, an injured employee suing a "third party" was required to include in the complaint only the amounts that the employer had already paid or would likely be required to pay in the future, since only the employer was allowed to join in such actions.*)

This Act further allows the Second Injury Fund to have a lien upon any judgment received by the employee against the "third party" or upon any settlement received by the employee from the "third party", so long as it gives written notice of the lien to the "third party" prior to the judgment or settlement. (*Previously, only the employer or its workers' compensation insurance carrier were allowed to have such a lien against an employee's judgment or settlement, since only the employer was allowed to join in such actions.*)

Technical Changes [PA 96-65, §2]

Several technical changes were also made in Section 31-293 of the Connecticut General Statutes to make it conform to the amended Section 31-284 of the Connecticut General Statutes, which includes the new provisions dealing with injured employees of uninsured employers (*discussed above*).

PUBLIC ACT NO. 96-72 (*House Bill No. 5447*)

An Act Concerning The Residency Of Workers' Compensation Commissioners

Public Act 96-72:

- was signed by Governor Rowland on May 9, 1996
- becomes effective on May 9, 1996
- modifies the following Connecticut General Statute:
31-276

Public Act 96-72 repeals a requirement regarding Workers' Compensation Commissioners which was no longer needed due to changes in the operation of the Workers' Compensation Commission pursuant to past legislation.

Commissioner Residency Requirement Repealed. [PA 96-72, §1]

This Act repeals a previous requirement in subsection (a) of Section 31-276 of the Connecticut General Statutes that at least two Workers' Compensation Commissioners live in each United States Congressional District in Connecticut.

Pursuant to PA 91-339, Commissioners are assigned by the Workers' Compensation Commission Chairman to the Commission's eight District Offices. As "at-large" representatives of the Commission, the Commissioners carry out the mandates of the agency; they are not acting as representatives of the residents of any single particular geographic area, but are serving on behalf of all the state's citizens.

PUBLIC ACT NO. 96-125 (*House Bill No. 5486*)

An Act Concerning The Furnishing Of Medical Reports Under The Workers' Compensation Act

Public Act 96-125:

- was signed by Governor Rowland on May 24, 1996
- becomes effective on October 1, 1996
- modifies the following Connecticut General Statute:
31-294f

Public Act 96-125 provides for a more consistent and prompt reporting of injured employees' medical conditions by medical providers in workers' compensation cases.

Medical Reports to be Furnished within 30 Days [PA 96-125]

Subsection (b) of Section 31-294f of the Connecticut General Statutes was amended by this Act to require that ALL medical reports concerning any injury of an employee sustained in the course of his employment be furnished within 30 days after the completion of the reports. Before this Act, only "IME" (*independent medical examination*) reports requested by an employer or directed by a Workers' Compensation Commissioner were required to be furnished within the 30-day period.

In addition, the statute requires that ALL workers' compensation medical reports be furnished at the same time and in the same manner to both the employer and to the employee (*or his or her attorney*).

PUBLIC ACT NO. 96-140 (*Substitute Senate Bill No. 563*)

An Act To Coordinate The State Family And Medical Leave Laws With The Federal Family And Medical Leave Laws

Public Act 96-140:

- was signed by Governor Rowland on May 29, 1996
- becomes effective on January 1, 1997
- modifies the following Connecticut General Statute:
5-248a
- repeals the following Connecticut General Statutes:
31-51cc to 31-51gg, inclusive
- adds seven (7) new sections to the Connecticut General Statutes

Public Act 96-140 incorporates many provisions of the federal Family And Medical Leave Act (FMLA) and its implementing regulations into the state’s family and medical leave law which applies to private-sector employers with 75 or more employees. Although not primarily related to workers’ compensation, there are several provisions which MAY affect an injured employee’s case, should such an injured employee elect to take a leave under this new Act.

Workers’ Compensation Determinations Utilized. [PA 96-140, §1]

This Act adds a new section to the Connecticut General Statutes which allows the Labor Commissioner, while administering and enforcing this Act, to recognize medical providers approved by the Workers’ Compensation Commission for the treatment of work-related injuries, and to utilize any applicable determinations made pursuant to the Workers’ Compensation Act.

Employee Return to Work [PA 96-140, §4]

This Act adds a new section to the Connecticut General Statutes which includes a statement that nothing in this Act regarding the return to work of an employee who has taken a medical leave under this Act will supersede another valid state law, including any of the workers’ compensation statutes.

Additional Rights of an Employee [PA 96-140, §4]

This Act adds a new section to the Connecticut General Statutes which includes a statement that nothing in this Act shall limit any additional rights an employee may have under other state or federal laws, including rights pursuant to the workers' compensation statutes.

Access to FMLA Records. [PA 96-140, §5]

This Act adds a new section to the Connecticut General Statutes which requires medical and other records relating to an employee's leave under this Act to be maintained as personnel records (*and therefore confidential*), but government officials (*which may include Workers' Compensation Commissioners*) investigating compliance with this Act or other pertinent law (*including workers' compensation law*) must be provided relevant information upon request.

PUBLIC ACT NO. 96-180 (*Substitute House Bill No. 5092*)

An Act Concerning The Revisor’s Technical Corrections To The General Statutes And To Certain Public And Special Acts

Public Act 96-180:

- was signed by Governor Rowland on May 31, 1996
- becomes effective on May 31, 1996
- modifies the following Connecticut General Statute related to workers’ compensation:
31-275

Public Act 96-180 makes technical changes and corrections to dozens of Connecticut General Statutes dealing with a wide variety of topics, and functions as sort of a “catch-all” bill to “clean up” the statutes. Only the one section of the Act described below is related to workers’ compensation in any way.

Technical Corrections to Section 31-275 (*WC Act Definitions*) [PA 96-180, §104]

This Act makes technical corrections to subdivisions (9) and (10) of Section 31-275 of the Connecticut General Statutes. A number of appearances of the word “subsection” are changed to the word “SUBDIVISION” to be technically correct for where they appear in the language of the statute and to properly refer to those portions of the statute to which they apply.

PUBLIC ACT NO. 96-216 (*Substitute Senate Bill No. 347*)
An Act Concerning Workers' Compensation Enforcement

Public Act 96-216:

- was signed by Governor Rowland on June 4, 1996
- becomes effective on June 4, 1996
- modifies the following Connecticut General Statutes:
 - 31-283a
 - 31-284
 - 31-349a
- modifies the following Public Act:
 - PA 95-277

Public Act 96-216 modifies Public Act 95-277 from last year's legislative session by clarifying certain provisions involving the issuance of building permits by local building officials and the requirement of proof of workers' compensation insurance coverage for employees on building projects for which such permits are issued. It also makes some changes in several statutes so they will conform to Public Act 95-277, and removes some incorrect language in one of the workers' compensation statutes.

Technical Corrections to Remove Incorrect Language [PA 96-216, §1]

This Act removes incorrect language from subsection (a) of Section 31-283a of the Connecticut General Statutes.

Employer Penalty for Noncompliance Increased [PA 96-216, §2]

This Act amends subsection (b) of Section 31-284 of the Connecticut General Statutes by increasing the monetary penalty on employers (*for noncompliance with the state's workers' compensation insurance requirements*) from \$1,000 to the much greater fines provided for in Section 31-288 of the Connecticut General Statutes, which can be as high as \$50,000. Public Act 96-65 repealed the lower \$1,000 fine altogether (*see page 2 of this pamphlet*).

Direction of Activities of State Investigators Clarified [PA 96-216, §3]

This Act amends Section 31-349a of the Connecticut General Statutes to make it conform to Public Act 95-277 from last year’s legislative session. It removes language which states that an investigator in the investigations unit of the Office of the State Treasurer is directed by a Workers’ Compensation Commissioner. Since the investigators were moved from the Workers’ Compensation Commission to the Treasurer’s Office by Public Act 95-277, their activities are no longer directed by Commissioners, but are under the direction of the Treasurer.

Building Permit Requirements Clarified [PA 96-216, §4]

This Act clarifies a “new” provision enacted last year in section 7 of Public Act 95-277, regarding proof of workers’ compensation insurance coverage as a requirement for obtaining a building permit from a local building official. The following changes were made to last year’s legislation:

- Proof of workers’ compensation insurance coverage is now required on ALL building projects, regardless of the cost of the project. *(Previously, this proof of coverage was required only on building projects totalling \$100,000 or more in the cost of work to be done.)*
- Proof of workers’ compensation coverage is required for all employees, (“employee” and “employer” are used in this Act as they are defined in Section 31-275 of the Connecticut General Statutes), BUT this requirement DOES NOT APPLY to a sole proprietor or a property owner, UNLESS such a sole proprietor or property owner intends to act as a general contractor or as a principal employer.
- A property owner no longer needs to certify in writing that he will do the construction work himself, if that is the case. *(This previous requirement was repealed and the situation is covered by the provision described immediately above.)*
- A local building official needs to require proof of workers’ compensation coverage ONLY at the time of the general contractor’s or principal employer’s initial application for the building permit. *(However, if a building official has reason to believe that coverage has lapsed, become improper, or has been dropped since the permit was issued, he should contact the Second Injury Fund’s Investigations Unit at 1-800-566-5888.)*

“Proof of Coverage” Defined for Building Permit Requirement [PA 96-216, §4]

In addition to the above clarifications of Public Act 95-277, this Act also describes exactly what documents properly constitute proof of workers’ compensation insurance coverage pursuant to this Act, and should be provided to a local building official to properly meet this requirement.

Any ONE of the following three documents will constitute sufficient proof of coverage. However, the individual applying for the building permit must choose the APPROPRIATE document for his situation to submit to the local building official as sufficient proof of coverage:

- **a written certificate of insurance** provided by the general contractor or principal employer

[NOTE: The certificate must be for WORKERS' COMPENSATION insurance, not liability, disability, or some other type of insurance.]

OR

- **a certificate from a Workers' Compensation Commissioner** indicating that the general contractor or principal employer has properly chosen not to obtain workers' compensation coverage pursuant to Section 31-275 of the Connecticut General Statutes

[NOTE: This certificate confirms ONLY that the individual has chosen to legally exclude HIMSELF from workers' compensation coverage as an officer of a corporation or as a member in a business partnership. Such an individual must still have proper workers' compensation coverage for ALL EMPLOYEES he hires to work for him on the job site.]

OR

- **if a sole proprietor or property owner intends to act as a general contractor or as a principal employer, a written certificate of workers' compensation insurance OR a sworn notarized affidavit**, which he shall provide, stating that he will require proof of workers' compensation insurance for all those employed on the job site in accordance with the provisions of chapter 568 (*the Workers' Compensation Act*)

The Workers' Compensation Commission has a "*Certificate of Proof of Exclusion from Workers' Compensation Coverage*", which a Workers' Compensation Commissioner will complete and sign to indicate that the individual requesting it has already filed a Form 6B (*exclusion for an officer of a corporation*) or a Form 6B-1 (*exclusion for a member of a business partnership*) with the Commission.

In addition, in an effort to help sole proprietors and property owners comply with this new legislation, the Commission has also prepared a "*Connecticut Workers' Compensation Insurance Affidavit for Property Owner or Sole Proprietor*", which may be used to indicate that the individual applying for the building permit (*whether a sole proprietor or a property owner*) will require proof of workers' compensation coverage for all those employed on the job site.

Both the "*Certificate*" and the "*Affidavit*" are available from the Commission's District Offices. The "*Affidavit*" is also available from the Commission's Office of the Chairman in Hartford.

[NOTE: The "Certificate" MUST be obtained from a District Office, because it requires the signature of the Commissioner from the appropriate office where the Form 6B or Form 6B-1 is filed, and these forms are ONLY filed in the Commission's District Offices.]

PUBLIC ACT NO. 96-230 (*Substitute House Bill No. 5036*)

An Act Concerning The State Police Auxiliary, The Civil Air Patrol And Heart And Hypertension Benefits

Public Act 96-230:

- was signed by Governor Rowland on June 7, 1996
- becomes effective on July 1, 1996
- modifies the following Connecticut General Statutes:
 - 7-433c
 - 29-22

Public Act 96-230, like the next one (*PA 96-231*), eliminates Heart and Hypertension Benefits for future paid municipal firefighters and police officers. Each of the two Acts specifies which employees will and won't be eligible for such benefits in the future.

Heart and Hypertension Benefits Eliminated for Newly Employed Employees. . . . [PA 96-230, §2]

This Act amends Section 7-433c of the Connecticut General Statutes to eliminate Heart and Hypertension Benefits for uniformed members of paid municipal fire departments and regular members of paid municipal police departments who are employed ON OR AFTER July 1, 1996.

Such firefighters and police officers who are newly employed will ONLY be eligible to receive benefits provided by the Workers' Compensation Act for their compensable work-related injuries.

Previously Employed Firefighters and Police Officers still Eligible. [PA 96-230, §2]

This Act also amends Section 7-433c of the Connecticut General Statutes to continue to allow uniformed members of paid municipal fire departments and regular members of paid municipal police departments who were employed BEFORE July 1, 1996 to be eligible to receive Heart and Hypertension Benefits.

In addition, such firefighters and police officers who were previously employed are no longer required to serve two years from the date of employment to be eligible for Heart and Hypertension Benefits. That previous requirement was repealed by this Act.

PUBLIC ACT NO. 96-231 (*Substitute Senate Bill No. 677*)

An Act Concerning Heart And Hypertension Benefits

Public Act 96-231:

- was signed by Governor Rowland on June 7, 1996
- becomes effective on July 1, 1996
- modifies the following Connecticut General Statute:
7-433c

Public Act 96-231, like the previous one (*PA 96-230*), eliminates Heart and Hypertension Benefits for future paid municipal firefighters and police officers. Each of the two Acts specifies which employees will and won't be eligible for such benefits in the future.

Heart and Hypertension Benefits Eliminated for Newly Employed Employees. . . . [PA 96-231, §1]

This Act amends Section 7-433c of the Connecticut General Statutes to eliminate Heart and Hypertension Benefits for uniformed members of paid municipal fire departments and regular members of paid municipal police departments who are employed AFTER July 1, 1996.

Such firefighters and police officers who are newly employed will ONLY be eligible to receive benefits provided by the Workers' Compensation Act for their compensable work-related injuries.

Previously Employed Firefighters and Police Officers still Eligible. [PA 96-231, §1]

This Act also amends Section 7-433c of the Connecticut General Statutes to continue to allow uniformed members of paid municipal fire departments and regular members of paid municipal police departments who were employed ON July 1, 1996 to be eligible to receive Heart and Hypertension Benefits.

In addition, such firefighters and police officers who were previously employed are no longer required to serve two years from the date of employment to be eligible for Heart and Hypertension Benefits. That previous requirement was repealed by this Act.

PUBLIC ACT NO. 96-242 (*Substitute House Bill No. 5799*)

An Act Concerning The Administration Of The Second Injury Fund And The Issuance Of Revenue Bonds Of The State Payable Solely From Assessments On Employers To Finance The Settlement Of Second Injury Claims

Public Act 96-242:

- was signed by Governor Rowland on June 6, 1996
- becomes effective on June 6, 1996
- modifies the following Connecticut General Statutes:
 - 31-349
 - 31-354
- modifies the following Public Act:
 - PA 95-277
- adds six (6) new sections to the Connecticut General Statutes

Public Act 96-242 continues the process of closing the state’s Second Injury Fund, which was begun by Public Act 95-277 from last year’s legislative session. This Act further limits the transfer of claims to the Fund, establishes mechanisms by which the state will fund the final closing of existing claims, and allows the Fund’s custodian to implement various cost-saving measures. The Act states that its provisions are for the public benefit and good, and that its authorizations for funding mechanisms are for a public purpose and the exercise of an essential governmental function. The Act also states that it “[supports] the policy of the state to improve the business climate in the state and still honor its obligations to employees who have second injury claims . . .”

Claims Not Eligible for Transfer by 1999 Remain with Employer or Insurer [PA 96-242, §1]

This Act adds a new subsection (f) to Section 31-349 of the Connecticut General Statutes, which limits the transfer of claims to the Second Injury Fund. It states that no claim where the custodian of the Second Injury Fund was served with a valid notice of intent to transfer will be eligible for transfer to the Fund, UNLESS all requirements (including payment of the 104 weeks of benefits by the employer or its insurer) have been completed PRIOR TO July 1, 1999.

All claims which are not eligible for transfer to the Fund ON OR BEFORE July 1, 1999 will remain the responsibility of the employer or its insurer.

Claims Not Transferred by 1999 Remain with Employer or Insurer [PA 96-242, §2]

This Act adds a new section to the Connecticut General Statutes, which limits the transfer of claims to the Second Injury Fund. It states that all transfers of claims to the Second Injury Fund with a date of injury prior to July 1, 1995 must be effected NO LATER THAN July 1, 1999.

All claims not transferred to the Fund ON OR BEFORE July 1, 1999 will remain the responsibility of the employer or its insurer.

Cost Savings on Prescription Drugs [PA 96-242, §3]

This Act adds a new section to the Connecticut General Statutes, which allows the custodian of the Second Injury Fund to implement cost-saving methodologies within the existing prescription drug program. However, he is specifically prohibited from mandating the use of a mail order pharmacy by the claimant.

Findings and Purposes of the Act Presented [PA 96-242, §4]

This Act adds a new section to the Connecticut General Statutes, which sets forth the findings and purposes behind the provisions contained in this Act.

This new section states that the closing of the Second Injury Fund pursuant to Public Act 95-277 and the efforts of the Fund’s administrators and employees, under the State Treasurer as custodian of the Fund, to manage the Fund have produced a dramatic reduction in Fund liability, thereby reducing the anticipated assessments to employers. However, it also finds that the cost of the settlement and payment of claims on a “pay-as-you-go” assessment method would require a significant increase in the aggregate employer assessments in fiscal years 1996, 1997, and 1998 to levels that are unacceptably high, unless a certain portion of the lump sum settlements are amortized over a longer period of time.

Responding to the problem of potentially unacceptably high levels of employer assessment, this section of the Act states that revenue obligations issued by the state for the purpose of raising revenues to fund the lump sum settlement and certain other structured settlements of the Fund amortized over a period not exceeding 20 years would allow the state to settle and otherwise manage claims while reducing employer assessments to the lowest practical level. Such revenue obligations would be secured by annual special assessment premium surcharges on self-insured and insured employers of the state. This “. . . [supports] the policy of the state to improve the business climate in the state and still honor its obligations to employees who have second injury claims . . .” and would also “. . . have the effect of encouraging a more rapid return of injured workers to meaningful employment thereby promoting the vitality of our economy . . .”

This section summarizes by saying that “. . . the provisions of this act are for the public benefit and good and the authorization provided in section 8 of this act of the issuance of special obligations of the state to finance lump sum and certain structured settlements of Second Injury Fund claims are declared to be for a public purpose and the exercise of an essential governmental function.”

Certain Health Care Organizations Considered “Self-Insured Employers” [PA 96-242, §5]

This Act modifies Section 14 of Public Act 95-277 by clarifying the definition of “self-insured employer.” It specifies that for purposes of the regulations governing assessments made on employers for the Fund’s liabilities [pursuant to Public Act 95-277], ON AND AFTER January 1, 1996, “self-insured employers” include employer mutual associations organized prior to the effective date of this Act (*June 6, 1996*) with a membership composed exclusively of health care providers and whose premium base is derived entirely from health care organizations.

Assessments for Second Injury Fund and Establishment of Separate Accounts . . . [PA 96-242, §6]

This Act amends Section 31-354 of the Connecticut General Statutes by establishing the special assessment premium surcharge on employers and by establishing three separate accounts within the Second Injury Fund to fund the purposes of this Act.

The special assessment premium surcharge is an annual assessment on insured and self-insured employers which is assessed in accordance with the regulations pursuant to section 14 of Public Act 95-277 as amended by this Act and in accordance with this Act. The amount of the assessment must be determined by the State Treasurer as an amount sufficient to pay the debt service on the revenue bonds authorized by section 8 of this Act, to pay the costs and expenses of operating the Fund, and to pay Fund stipulations on claims settled by the Fund’s custodian or other benefits payable out of the Fund which are not funded by the revenue bonds.

The Fund’s custodian must establish a factor for the annual special assessment premium surcharge that caps the surcharge for the fiscal years ending June 30, 1996, 1997, and 1998. In determining this factor, he must consider the funding mechanism authorized by this Act, recognize that an acceptable level of employer assessment is important to the vitality of the state’s economy, and must ensure that services will be provided to injured workers which will enhance their ability to return to work and improve their quality of life. In any event, the factor must not exceed a rate of 15% on the standard premiums with respect to workers’ compensation and employers’ liability policies, for insured employers. For self-insured employers, the factor must not exceed a comparable percentage limitation representing their pro rata share of any special assessment premium surcharge.

This Act also requires the State Treasurer to establish within the Second Injury Fund three separate accounts known as the operating account, the settlement account, and the finance account. The operating account shall cover the costs and expenses of operating the Fund. The settlement account shall cover actual disbursement of the settled claims, whether they are by one-time full payments or by payments over a period of time. The finance account shall contain such funds and be operated in the manner provided in section 7 of this Act (*discussed below*).

Administration of the Second Injury Fund Finance Account [PA 96-242, §7]

This Act adds a new section to the Connecticut General Statutes which establishes the Second Injury Fund’s finance account as a trust fund to be administered by the State Treasurer. This account is to be funded firstly by the proceeds of the state revenue bonds authorized by section 8 of this Act, as well

as by the interest income or income earned on investment of moneys for disbursement purposes, and secondly by the special assessment premium surcharge on employers.

This new section establishes a number of subaccounts within the Fund's finance account, each of which is to be used for a different purpose as required by this Act. This section also allows the Treasurer to withdraw amounts from the finance account for the purposes of section 9 of this Act (*discussed below*).

State Allowed to Issue Revenue Bonds to Finance Second Injury Fund Liabilities . . [PA 96-242, §8]

This Act adds a new section to the Connecticut General Statutes which allows the State Bond Commission to authorize the issuance of revenue bonds of the state to finance the purposes and expenses of the finance account established by this Act and to finance certain administrative costs associated with issuing the bonds. This lengthy new section also establishes the requirements which govern the issuance, administration, sale, ownership, and other conditions of the bonds.

Finance Account Proceeds may be Applied for Other Purposes [PA 96-242, §9]

This Act adds a new section to the Connecticut General Statutes which allows the State Treasurer, on request, to apply the proceeds of the Second Injury Fund's finance account to the Fund's settlement account to settle claims or to its operating account to pay the costs and expenses of the Fund, if there are amounts available in the finance account after providing for the annual debt service on the revenue bonds issued pursuant to section 8 of this Act.

PUBLIC ACT NO. 96-267 (*Substitute House Bill No. 5632*)

An Act Concerning Private Employer Workers' Compensation Group Self-Insurance

Public Act 96-267:

- was signed by Governor Rowland on June 12, 1996
- becomes effective on October 1, 1996
- modifies the following Connecticut General Statutes:
 - 31-288
 - 31-289b
 - 31-316
 - 31-345
- adds twenty-five (25) new sections to the Connecticut General Statutes

Public Act 96-267 allows groups of private employers to join together to self-insure their workers' compensation liabilities. It also caps the annual assessment on employers which finances the operations of the Workers' Compensation Commission, directs payment of penalties on employers for noncompliance with the state's workers' compensation insurance requirements to the state's Second Injury Fund instead of to the Workers' Compensation Commission, gives the State Attorney General greater authority to enjoin employers who are not complying with the requirements of the Workers' Compensation Act from conducting business in Connecticut, requires a study of the state-mandated employer health and safety committees established by Public Act 93-228, and allows a Workers' Compensation Commissioner to increase an employee's award for compensation in situations where the employer failed to report the employee's injury.

Private Employers Allowed to Form WC Self-Insurance Groups [PA 96-267, §1-§24]

The major portion of this Act adds 24 new sections to the Connecticut General Statutes which allow groups of 15 or more private employers who are engaged in the same or similar type of business to enter into agreements to pool their liabilities for workers' compensation benefits and employers' liability. These private employer workers' compensation self-insurance groups must meet a number of required criteria, as provided for by this Act, including their mutual membership in a bona fide

trade or professional association which has been in existence for not less than five years. The state’s Insurance Commissioner is responsible for accepting applications for such groups, and approves group plans meeting the requirements established by this Act.

Employer Assessments Capped [PA 96-267, §25]

This Act amends Section 31-345 of the Connecticut General Statutes by reducing the annual assessment made on employers to finance the operation of the state’s Workers’ Compensation Commission pro rata by the amount of any surplus from prior fiscal year assessments. The State Comptroller is required to examine the Workers’ Compensation Administration Fund, as soon as practicable after the close of the state fiscal year, to determine the amount of any surplus, and is then required to direct the State Treasurer to set aside the surplus within the Fund. The surplus established by this Act is defined as the amount which exceeds 50% of the Commission’s expenditures for the most recently completed fiscal year.

Employer Penalties Paid Directly to Second Injury Fund [PA 96-267, §26]

Subsection (e) of Section 31-288 of the Connecticut General Statutes is amended by this Act to require that penalties paid pursuant to Section 31-288 be paid directly to the state’s Second Injury Fund. *(Previously, such penalties were paid to the Workers’ Compensation Commission, whose Chairman then transferred the penalties collected to the custodian of the Second Injury Fund.)*

The Workers’ Compensation Commission Chairman is now required to notify the State Treasurer and the State Attorney General whenever a penalty is imposed pursuant to Section 31-288, along with the date it was imposed, the amount of the penalty, and whether there has been an appeal of the penalty. Any civil penalty order issued pursuant to subsections (c) and (d) of Section 31-288 must state that payment shall be made to the Second Injury Fund of the State Treasurer, and that failure to pay the penalty within 90 days may result in civil action to double the penalty.

The Treasurer shall collect any penalty owed, and if the penalty is not paid within the 90-day period, he must notify the Workers’ Compensation Commission Chairman and the Attorney General, so that a civil action may be brought pursuant to Section 31-289 of the Connecticut General Statutes.

Attorney General Given Greater Authority to Enjoin Employers [PA 96-267, §27]

This Act amends Section 31-289b of the Connecticut General Statutes by giving the State Attorney General greater authority to bring civil actions against employers who wilfully fail to comply with the requirements of the Workers’ Compensation Act to enjoin them from conducting business in Connecticut, until they fully comply with the requirements of the Workers’ Compensation Act. A previous provision that an employer’s failure to comply be “repeatedly”, as well as wilfully, was repealed by this Act, so the Attorney General does not have to show a history of noncompliance.

Health and Safety Committees to be Studied [PA 96-267, §28]

This Act adds a new section to the Connecticut General Statutes which directs the state’s Legislative Program Review and Investigations Committee, in cooperation with the General Assembly’s Labor and Public Employees Committee, to study the effectiveness of the state-mandated employer health and safety committees pursuant to Section 31-40v of the General Statutes. The study will begin January 1, 1999 and a report will be submitted to the General Assembly by January 1, 2000.

The study will evaluate the effect of the state’s health and safety committee regulations to determine whether they should be amended to be consistent with Public Act 93-228, which established them. Criteria for the study will include employer compliance with the regulations’ requirements, opinions of members of business and labor, and injury reduction due to the health and safety committee requirements.

Workers’ Compensation Commissioner May Increase Compensation Awards [PA 96-267, §29]

This Act amends Section 31-316 of the Connecticut General Statutes regarding the reporting of workplace injuries by employers. When an employer fails to report an injury pursuant to subsection (a) of Section 31-316, a Workers’ Compensation Commissioner may now increase an award for compensation for an employee’s injury proportionate to the prejudice that the employee sustained due to the employer’s failure to file the First Report of Injury form.

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