STATE OF NEW YORK

4129

2023-2024 Regular Sessions

IN ASSEMBLY

February 9, 2023

Introduced by M. of A. CONRAD -- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to recoveries from a third-party action

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 and the fifth undesignated paragraph of subdivision 5 of section 29 of the workers' compensation law, subdivision 1 as amended by chapter 805 of the laws of 1984 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, and the fifth undesignated paragraph of subdivision 5 as amended by chapter 246 of the laws of 1967, are amended to read as follows:

1. If an employee entitled to compensation under this chapter be injured or killed by the negligence or wrong of another not in the same employ, such injured employee, or in case of death, his dependents, need not elect whether to take compensation and medical benefits under this chapter or to pursue his remedy against such other but may take such compensation and medical benefits and at any time either prior thereto or within six months after the awarding of compensation or within nine months after the enactment of a law or laws creating, establishing or affording a new or additional remedy or remedies, pursue his remedy against such other subject to the provisions of this chapter. If such injured employee, or in case of death, his dependents, take or intend to take compensation, and medical benefits in the case of an employee, under this chapter and desire to bring action against such other, such action must be commenced not later than six months after the awarding of compensation or not later than nine months after the enactment of such law or laws creating, establishing or affording a new or additional remedy or remedies and in any event before the expiration of one year from the date such action accrues. In such case, the state insurance fund, if compensation be payable therefrom, and otherwise the person,

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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association, corporation or insurance carrier liable for the payment of such compensation, as the case may be, shall have a lien on the proceeds of any recovery from such other, **to the extent such recovery is for lost wages or medical expenses,** whether by judgment, settlement or otherwise, after the deduction of the reasonable and necessary expenditures, including attorney's fees, incurred in effecting such recovery, to the extent of the total amount of compensation awarded under or provided or estimated by this chapter for such case and the expenses for medical treatment paid or to be paid by it and to such extent such recovery shall be deemed for the benefit of such fund, person, association, corporation or carrier. Should the employee or his dependents secure a recovery from such other, whether by judgment, settlement or otherwise, such employee or dependents may apply on notice to such lienor to the court in which the third party action was instituted, or to a court of competent jurisdiction if no action was instituted, for an order apportioning the reasonable and necessary expenditures, including attorneys' fees, incurred in effecting such recovery. Such expenditures shall be equitably apportioned by the court between the employee or his dependents and the lienor. Notice of the commencement of such action shall be given within thirty days thereafter to the chairman, the employer and the insurance carrier upon a form prescribed by the chairman. Any of the foregoing providers of compensation and/or medical benefits which has recovered a lien pursuant to the provisions hereof against the recovery of a person injured on or after February first, nineteen hundred seventy-four and before July first, nineteen hundred seventy-eight, through the use or operation of a motor vehicle in this state, shall notify such person by certified mail in a manner to be approved by the chairman and the superintendent of financial services of the responsibility of an "insurer" (as defined in subsection (g) of section five thousand one hundred two of the insurance law), to reimburse such person under such circumstances to the extent that the recovered lien represent first party benefits as defined in article fifty-one of the insurance law.

A copy of the papers to be used on the application to compromise and settle the claim must be served as directed by the court or in the same manner as provided in the civil practice law and rules for a notice of motion upon the commissioners of the state insurance fund or such officer thereof designated by them or upon the person, association, corporation, or insurance carrier, whose written approval would have been required to compromise such cause of action by the employee or his dependents. This notice shall afford them the opportunity to submit affidavits and to be heard by the court on the application. **A petition may also be filed pursuant to this subdivision allocating a portion of the third-party recovery to only lost wages and/or medical treatment.**

§ 2. This act shall take effect immediately.