STATE OF NEW YORK

148--A

2023-2024 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 4, 2023

Introduced by M. of A. CRUZ, SILLITTI, SIMONE -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public officers law, in relation to prohibiting reimbursement of campaign and political committees and legal defense funds for defense costs incurred on behalf of state employees

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

Section 1. Subdivision 2 of section 19 of the public officers law, as amended by chapter 769 of the laws of 1985, is amended to read as follows:

2. (a) Upon compliance by the employee with the provisions of subdivision three of this section, and subject to **the restrictions set forth in paragraph (b) of this subdivision and** the conditions set forth in paragraph [~~(b)~~] **(c)** of this subdivision, it shall be the duty of the state to pay reasonable attorneys' fees and litigation expenses incurred by or on behalf of an employee in [~~his or her~~] **such employee's** defense of a criminal proceeding in a state or federal court arising out of any act which occurred while such employee was acting within the scope of [~~his~~] **such employee's** public employment or duties upon [~~his~~] **such employee's** acquittal or upon the dismissal of the criminal charges against [~~him~~] **the employee** or reasonable attorneys' fees incurred in connection with an appearance before a grand jury which returns no true bill against the employee where such appearance was required as a result of any act which occurred while such employee was acting within the scope of [~~his~~] **the employee's** public employment or duties unless such appearance occurs in the normal course of the public employment or duties of such employee.

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

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(b) **No reimbursement shall be paid pursuant to this section to any campaign or political committee or legal defense fund that pays all or any portion of an employee's reasonable attorneys' fees and/or litigation expenses. Reimbursements received pursuant to this section by the employee or their legal counsel shall not be paid by such employee or legal counsel to a campaign or political committee or legal defense fund. Furthermore, an employee on whose behalf a legal defense fund or legal defense funds have been established shall not be eligible for reimbursement pursuant to this section until all moneys in such fund or funds have been expended for the employee's reasonable attorneys' fees and/or litigation expenses. Prior to reimbursement being issued, an employee and their legal counsel shall certify to both the attorney general and the comptroller that there are no funds remaining in any legal defense fund established on behalf of the employee and that no monies requested pursuant to this section will be used to reimburse a campaign or political committee or legal defense fund.**

(c) Upon the application for reimbursement for reasonable attorneys' fees or litigation expenses or both made by or on behalf of an employee as provided in subdivision three of this section, the attorney general shall determine, based upon [~~his~~] **their** investigation and [~~his~~] **their** review of the facts and circumstances, whether such reimbursement shall be paid. The attorney general shall notify the employee in writing of such determination. Upon determining that such reimbursement should be provided, the attorney general shall so certify to the comptroller. Upon such certification, reimbursement shall be made for such fees or expenses or both upon the audit and warrant of the comptroller. On or before January fifteenth the comptroller, in consultation with the department of law and other agencies as may be appropriate, shall submit to the governor and the legislature an annual accounting of judgments, settlements, fees, and litigation expenses paid pursuant to this section during the preceding and current fiscal years. Such accounting shall include, but not be limited to the number, type and amount of claims so paid, as well as an estimate of claims to be paid during the remainder of the current fiscal year and during the following fiscal year. Any dispute with regard to entitlement to reimbursement or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by a court of competent jurisdiction upon appropriate motion or by way of a special proceeding.

§ 2. Subdivision 2 of section 17 of the public officers law, as added by chapter 466 of the laws of 1978 and paragraph (a) as amended by chapter 768 of the laws of 1985, is amended to read as follows:

2. (a) Upon compliance by the employee with the provisions of subdivision four of this section, the state shall provide for the defense of the employee in any civil action or proceeding in any state or federal court arising out of any alleged act or omission which occurred or is alleged in the complaint to have occurred while the employee was acting within the scope of [~~his~~] **the employee's** public employment or duties; or which is brought to enforce a provision of section nineteen hundred eighty-one or nineteen hundred eighty-three of title forty-two of the United States code and the act or omission underlying the action occurred or is alleged in the complaint to have occurred while the employee was acting within the scope of [~~his~~] **the employee's** public employment or duties. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or on behalf of the state.

(b) Subject to the conditions set forth in paragraph (a) of this subdivision, the employee shall be entitled to be represented by the attorney general, provided, however, that the employee shall be entitled to representation by private counsel of [~~his~~] **the employee's** choice in any civil judicial proceeding whenever the attorney general determines based upon [~~his~~] **their** investigation and review of the facts and circumstances of the case that representation by the attorney general would be inappropriate, or whenever a court of competent jurisdiction, upon appropriate motion or by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by private counsel of [~~his~~] **the employee's** choice. The attorney general shall notify the employee in writing of such determination that the employee is entitled to be represented by private counsel. The attorney general may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel. If the employee or group of employees is entitled to representation by private counsel under the provisions of this section, the attorney general shall so certify to the comptroller. Reasonable attorneys' fees and litigation expenses shall be paid by the state to such private counsel from time to time during the pendency of the civil action or proceeding subject to certification that the employee is entitled to representation under the terms and conditions of this section by the head of the department, commission, division, office or agency in which such employee is employed [~~and~~] upon the audit and warrant of the comptroller**, and subject to the restrictions set forth in paragraph (c) of this subdivision**. Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

(c) **No funds shall be paid pursuant to this section to any campaign or political committee or legal defense fund. Funds received pursuant to this section by the employee or their legal counsel shall not be paid by such employee or legal counsel to a campaign or political committee or legal defense fund. Furthermore, an employee on whose behalf a legal defense fund or legal defense funds have been established, shall not be eligible for payment pursuant to this section until all moneys in such fund or funds have been expended for the employee's reasonable attorneys' fees and/or litigation expenses. Prior to payment being issued, an employee and their legal counsel shall certify to both the attorney general and the comptroller that there are no funds remaining in any legal defense fund established on behalf of the employee and that no monies requested pursuant to this section will be used to reimburse a campaign or political committee or legal defense fund.**

(d) Where the employee delivers process and a request for a defense to the attorney general as required by subdivision four of this section, the attorney general shall take the necessary steps including the retention of private counsel under the terms and conditions provided in paragraph (b) of subdivision two of this section on behalf of the employee to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

§ 3. This act shall take effect immediately and shall apply to any pending claim not paid by the state before such effective date, and to any new claim submitted to the state on or after such effective date.