

# STATE OF NEW YORK

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4129

2023-2024 Regular Sessions

## IN ASSEMBLY

February 9, 2023

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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:

1 Section 1. Subdivision 1 and the fifth undesignated paragraph of  
2 subdivision 5 of section 29 of the workers' compensation law, subdivi-  
3 sion 1 as amended by chapter 805 of the laws of 1984 and as further  
4 amended by section 104 of part A of chapter 62 of the laws of 2011, and  
5 the fifth undesignated paragraph of subdivision 5 as amended by chapter  
6 246 of the laws of 1967, are amended to read as follows:

7 1. If an employee entitled to compensation under this chapter be  
8 injured or killed by the negligence or wrong of another not in the same  
9 employ, such injured employee, or in case of death, his dependents, need  
10 not elect whether to take compensation and medical benefits under this  
11 chapter or to pursue his remedy against such other but may take such  
12 compensation and medical benefits and at any time either prior thereto  
13 or within six months after the awarding of compensation or within nine  
14 months after the enactment of a law or laws creating, establishing or  
15 affording a new or additional remedy or remedies, pursue his remedy  
16 against such other subject to the provisions of this chapter. If such  
17 injured employee, or in case of death, his dependents, take or intend to  
18 take compensation, and medical benefits in the case of an employee,  
19 under this chapter and desire to bring action against such other, such  
20 action must be commenced not later than six months after the awarding of  
21 compensation or not later than nine months after the enactment of such  
22 law or laws creating, establishing or affording a new or additional  
23 remedy or remedies and in any event before the expiration of one year  
24 from the date such action accrues. In such case, the state insurance  
25 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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1 association, corporation or insurance carrier liable for the payment of  
2 such compensation, as the case may be, shall have a lien on the proceeds  
3 of any recovery from such other, to the extent such recovery is for lost  
4 wages or medical expenses, whether by judgment, settlement or otherwise,  
5 after the deduction of the reasonable and necessary expenditures,  
6 including attorney's fees, incurred in effecting such recovery, to the  
7 extent of the total amount of compensation awarded under or provided or  
8 estimated by this chapter for such case and the expenses for medical  
9 treatment paid or to be paid by it and to such extent such recovery  
10 shall be deemed for the benefit of such fund, person, association,  
11 corporation or carrier. Should the employee or his dependents secure a  
12 recovery from such other, whether by judgment, settlement or otherwise,  
13 such employee or dependents may apply on notice to such lienor to the  
14 court in which the third party action was instituted, or to a court of  
15 competent jurisdiction if no action was instituted, for an order appor-  
16 tioning the reasonable and necessary expenditures, including attorneys'  
17 fees, incurred in effecting such recovery. Such expenditures shall be  
18 equitably apportioned by the court between the employee or his depen-  
19 dents and the lienor. Notice of the commencement of such action shall be  
20 given within thirty days thereafter to the chairman, the employer and  
21 the insurance carrier upon a form prescribed by the chairman. Any of the  
22 foregoing providers of compensation and/or medical benefits which has  
23 recovered a lien pursuant to the provisions hereof against the recovery  
24 of a person injured on or after February first, nineteen hundred seven-  
25 ty-four and before July first, nineteen hundred seventy-eight, through  
26 the use or operation of a motor vehicle in this state, shall notify such  
27 person by certified mail in a manner to be approved by the chairman and  
28 the superintendent of financial services of the responsibility of an  
29 "insurer" (as defined in subsection (g) of section five thousand one  
30 hundred two of the insurance law), to reimburse such person under such  
31 circumstances to the extent that the recovered lien represent first  
32 party benefits as defined in article fifty-one of the insurance law.

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

44 § 2. This act shall take effect immediately.