

STATE OF NEW YORK

3293

2025-2026 Regular Sessions

IN ASSEMBLY

January 27, 2025

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~~] such employ-
10 ee's dependents, need not elect whether to take compensation and medical
11 benefits under this chapter or to pursue [~~his~~] such employee's remedy
12 against such other but may take such compensation and medical benefits
13 and at any time either prior thereto or within six months after the
14 awarding of compensation or within nine months after the enactment of a
15 law or laws creating, establishing or affording a new or additional
16 remedy or remedies, pursue [~~his~~] such employee's remedy against such
17 other subject to the provisions of this chapter. If such injured employ-
18 ee, or in case of death, [~~his~~] such employee's dependents, take or
19 intend to take compensation, and medical benefits in the case of an
20 employee, under this chapter and desire to bring action against such
21 other, such action must be commenced not later than six months after the
22 awarding of compensation or not later than nine months after the enact-
23 ment of such law or laws creating, establishing or affording a new or
24 additional remedy or remedies and in any event before the expiration of
25 one year from the date such action accrues. In such case, the state

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

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1 insurance fund, if compensation be payable therefrom, and otherwise the
2 person, association, corporation or insurance carrier liable for the
3 payment of such compensation, as the case may be, shall have a lien on
4 the proceeds of any recovery from such other, to the extent such recov-
5 ery is for lost wages or medical expenses, whether by judgment, settle-
6 ment or otherwise, after the deduction of the reasonable and necessary
7 expenditures, including attorney's fees, incurred in effecting such
8 recovery, to the extent of the total amount of compensation awarded
9 under or provided or estimated by this chapter for such case and the
10 expenses for medical treatment paid or to be paid by it and to such
11 extent such recovery shall be deemed for the benefit of such fund,
12 person, association, corporation or carrier. Should the employee or
13 ~~[his]~~ such employee's dependents secure a recovery from such other,
14 whether by judgment, settlement or otherwise, such employee or depen-
15 dents may apply on notice to such lienor to the court in which the third
16 party action was instituted, or to a court of competent jurisdiction if
17 no action was instituted, for an order apportioning the reasonable and
18 necessary expenditures, including attorneys' fees, incurred in effecting
19 such recovery. Such expenditures shall be equitably apportioned by the
20 court between the employee or ~~[his]~~ such employee's dependents and the
21 lienor. Notice of the commencement of such action shall be given within
22 thirty days thereafter to the ~~[chairman]~~ chair, the employer and the
23 insurance carrier upon a form prescribed by the ~~[chairman]~~ chair. Any of
24 the foregoing providers of compensation and/or medical benefits which
25 has recovered a lien pursuant to the provisions hereof against the
26 recovery of a person injured on or after February first, nineteen
27 hundred seventy-four and before July first, nineteen hundred seventy-
28 eight, through the use or operation of a motor vehicle in this state,
29 shall notify such person by certified mail in a manner to be approved by
30 the ~~[chairman]~~ chair and the superintendent of financial services of the
31 responsibility of an "insurer" (as defined in subsection (g) of section
32 five thousand one hundred two of the insurance law), to reimburse such
33 person under such circumstances to the extent that the recovered lien
34 represent first party benefits as defined in article fifty-one of the
35 insurance law.

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

48 § 2. This act shall take effect immediately.