

SENATE, No. 2721

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JULY 28, 2020

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Removes limitations on expenses of suit and attorneys' fees from third party liability claims in workers' compensation cases.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning expenses of suit and attorneys' fees in certain
2 workers' compensation cases and amending R.S.34:15-40.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. R.S.34:15-40 is amended to read as follows:

8 34:15-40. Where a third person is liable to the employee or his
9 dependents for an injury or death, the existence of a right of
10 compensation from the employer or insurance carrier under this
11 statute shall not operate as a bar to the action of the employee or his
12 dependents, nor be regarded as establishing a measure of damage
13 therein. In the event that the employee or his dependents shall
14 recover and be paid from the said third person or his insurance
15 carrier, any sum in release or in judgment on account of his or its
16 liability to the injured employee or his dependents, the liability of
17 the employer under this statute thereupon shall be only such as is
18 hereinafter in this section provided.

19 (a) The obligation of the employer or his insurance carrier under
20 this statute to make compensation payments shall continue until the
21 payment, if any, by such third person or his insurance carrier is
22 made.

23 (b) If the sum recovered by the employee or his dependents
24 from the third person or his insurance carrier is equivalent to or
25 greater than the liability of the employer or his insurance carrier
26 under this statute, the employer or his insurance carrier shall be
27 released from such liability and shall be entitled to be reimbursed,
28 as hereinafter provided, for the medical expenses incurred and
29 compensation payments theretofore paid to the injured employee or
30 his dependents less employee's expenses of suit and attorney's fee
31 as hereinafter defined.

32 (c) If the sum recovered by the employee or his dependents as
33 aforesaid is less than the liability of the employer or his insurance
34 carrier under this statute, the employer or his insurance carrier shall
35 be liable for the difference, plus the employee's expenses of suit and
36 attorney's fee as hereinafter defined, and shall be entitled to be
37 reimbursed, as hereinafter provided for so much of the medical
38 expenses incurred and compensation payments theretofore paid to
39 the injured employee or his dependents as exceeds the amount of
40 such difference plus such employee's expenses of suit and attorney's
41 fee.

42 (d) If at any time prior to the payment by the third person or his
43 insurance carrier to the injured employee or his dependents, the
44 employer or his insurance carrier shall serve notice, as hereinafter
45 provided, upon such third person or his insurance carrier that

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 compensation has been applied for by the injured employee or his
2 dependents it shall thereupon become the duty of such third person
3 or his insurance carrier, before making any payment to the injured
4 employee or his dependents, to inquire from such employer or his
5 insurance carrier the amount of medical expenses incurred and
6 compensation theretofore paid to the injured employee or to his
7 dependents. Where such notice shall have been served, it shall
8 further become the duty of such third person or his insurance
9 carrier, before making any payment as aforesaid, to inquire from
10 such injured employee or his dependents the amount of the
11 expenses of suit and attorney's fee, or either of them in the action or
12 settlement of the claim against such third person or his insurance
13 carrier. Thereafter, out of that part of any amount about to be paid
14 in release or in judgment by such third person or his insurance
15 carrier on account of his or its liability to the injured employee or
16 his dependents, the employer or his insurance carrier shall be
17 entitled to receive from such third person or his insurance carrier so
18 much thereof as may be due the employer or insurance carrier
19 pursuant to subparagraph (b) or (c) of this section. Such sum shall
20 be deducted by such third person or his insurance carrier from the
21 sum to be paid in release or in judgment to the injured employee or
22 his dependents and shall be paid by such third person or his
23 insurance carrier to the employer or his insurance carrier. Service
24 of notice, hereinbefore required to be made by the employer or his
25 insurance carrier upon such third person or his insurance carrier,
26 shall be by registered mail, return receipt and in cases other than an
27 individual shall be mailed to the registered office of such other third
28 person or his insurance carrier.

29 (e) As used in this section, "expenses of suit" shall mean such
30 reasonable expenses, including, but not **【in excess of \$750】** limited
31 to, the expenses of discovery, document reproduction and expert
32 testimony, and "attorney's fee" shall mean such reasonable fee**【**, but
33 not in excess of 33 1/3 %**】** of that part of the sum paid in release or
34 in judgment to the injured employee or his dependents by such third
35 person or his insurance carrier to which the employer or his
36 insurance carrier shall be entitled in reimbursement under the
37 provisions of this section**【**, but on all sums in excess thereof, this
38 percentage shall not be binding**】**, as submitted by the attorney and
39 determined by the court.

40 (f) When an injured employee or his dependents fail within 1
41 year of the accident to either effect a settlement with the third
42 person or his insurance carrier or institute proceedings for recovery
43 of damages for his injuries and loss against the third person, the
44 employer or his insurance carrier, 10 days after a written demand on
45 the injured employee or his dependents, can either effect a
46 settlement with the third person or his insurance carrier or institute
47 proceedings against the third person for the recovery of damages for

1 the injuries and loss sustained by such injured employee or his
2 dependents and any settlement made with the third person or his
3 insurance carrier or proceedings had and taken by such employer or
4 his insurance carrier against such third person, and such right of
5 action shall be only for such right of action that the injured
6 employee or his dependents would have had against the third
7 person, and shall constitute a bar to any further claim or action by
8 the injured employee or his dependents against the third person. If a
9 settlement is effected between the employer or his insurance carrier
10 and the third person or his insurance carrier, or a judgment is
11 recovered by the employer or his insurance carrier against the third
12 person for the injuries and loss sustained by the employee or his
13 dependents and if the amount secured or obtained by the employer
14 or his insurance carrier is in excess of the employer's obligation to
15 the employee or his dependents and the expense of suit, such excess
16 shall be paid to the employee or his dependents. The legal action
17 contemplated hereinabove shall be a civil action at law in the name
18 of the injured employee or by the employer or insurance carrier in
19 the name of the employee to the use of the employer or insurance
20 carrier, or by the proper party for the benefit of the next of kin of
21 the employee. Where an injured employee or his dependents have
22 instituted proceedings for recovery of damages for his injuries and
23 loss against a third person and such proceedings are dismissed for
24 lack of prosecution, the employer or insurance carrier shall, upon
25 application made within 90 days thereafter, be entitled to have such
26 dismissal set aside, and to continue the prosecution of such
27 proceedings in the name of the injured employee or dependents in
28 accordance with the provisions of this section.

29 (g) If such employee or his dependents effect a settlement with
30 the third person or his insurance carrier or institute proceedings
31 against the third person prior to the service of notice upon the third
32 person or his insurance carrier of the compensation obligation of the
33 employer or his insurance carrier or prior to the institution of any
34 proceedings against the third person by the employer or his
35 insurance carrier for the injuries and loss sustained by such
36 employee or his dependents, such employer or his insurance carrier
37 is barred from instituting any action or proceedings against the third
38 person for the injuries and loss sustained by such employee or his
39 dependents.

40 The words "third person" as used in this section include
41 corporations, companies, associations, societies, firms, partnerships
42 and joint stock companies as well as individuals.

43 (cf: P.L.2007, c.23, s.1)

44

45 2. This act shall take effect immediately.

1 STATEMENT

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3 This bill removes limitations on costs of suit and attorneys' fees
4 from third party liability claims in workers' compensation cases.
5 Under current law, expenses of a suit in these matters are limited to
6 \$750. This bill removes the limitation and instead allows for
7 payment of reasonable costs.

8 Additionally, the bill removes the limitation on attorneys' fees to
9 33 1/3 percent of the award paid, and instead allows for reasonable
10 attorneys' fees.