

SENATE, No. 2866

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED SEPTEMBER 14, 2020

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Prohibits workers' compensation insurance carrier from filing subrogation claim against third party for employee injury arising from an automobile accident.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning subrogation claims against third parties in
2 workers' compensation matters 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 expenses, but not in excess of \$750 and "attorney's fee" shall mean
31 such fee, but not in excess of 33 1/3 % of that part of the sum paid
32 in release or in judgment to the injured employee or his dependents
33 by such third person or his insurance carrier to which the employer
34 or his insurance carrier shall be entitled in reimbursement under the
35 provisions of this section, but on all sums in excess thereof, this
36 percentage shall not be binding.

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

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

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

36 (h) Notwithstanding any provision of law to the contrary,
37 including but not limited to subsection (f) this section, an employer
38 or insurance carrier shall be prohibited from filing a claim against a
39 third party where an employee receives a workers' compensation
40 award as a result of an injury sustained by the employee in a work-
41 related automobile accident.

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

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

46
47 2. This act shall take effect immediately and shall be applicable
48 to claims filed on or after the date of enactment.

1 STATEMENT

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3 This bill provides that an employer or an insurance carrier for
4 workers' compensation benefits is barred from filing a claim against
5 a third party to recover benefits that were paid to an employee for a
6 work-related automobile accident.

7 This bill is in response to the State Supreme Court's decision on
8 May 12, 2020 in New Jersey Transit Corporation v. Sanchez and
9 Smith, which held that New Jersey Transit was not barred by
10 workers' compensation law from filing an action against a third
11 party for injuries sustained by an employee in a work-related
12 automobile accident.

13 This court decision will allow for a cost-shift from the workers'
14 compensation system to the automobile insurance system, a result
15 that was never intended by the Legislature and may raise premiums
16 for consumers.

17 This bill will prohibit an employer or workers' compensation
18 insurance carrier from filing a claim against a third party when an
19 employee receives a workers' compensation award as a result of an
20 injury sustained by the employee in a work-related automobile
21 accident.