

34:15-8

LEGISLATIVE HISTORY CHECKLIST  
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(Workman's Compensation--election  
or surrender of other remedies)

NJSA: 34:15-8  
LAWS OF: 1961 CHAPTER: 2  
BILL NO: A277  
SPONSOR(S): Crabiel and Meloni  
DATE INTRODUCED: January 23, 1961  
COMMITTEE: ASSEMBLY: ---  
SENATE: ---  
AMENDED DURING PASSAGE: Yes  
DATE OF PASSAGE: ASSEMBLY: January 30, 1961  
SENATE: January 30, 1961  
DATE OF APPROVAL: February 9, 1961

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: No  
COMMITTEE STATEMENT: ASSEMBLY: No  
SENATE: No  
FISCAL NOTE: No  
VETO MESSAGE: No  
MESSAGE ON SIGNING: No  
FOLLOWING WERE PRINTED:  
REPORTS: No  
HEARINGS: No

Similar bill during previous Legislative session:  
A117 (1960) -- ~~bill and Governor's statement--attached.~~

KBG:pp SPONSORS' STATEMENT & GOVERNOR'S PRESS RELEASE  
CONCERNING POCKET VETO (MAR. 7, 1961)

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CHAPTER 2 JANUARY 23, 1961

APPROVED 2-9-61  
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ASSEMBLY, No. 277

STATE OF NEW JERSEY

INTRODUCED JANUARY 23, 1961

By Assemblymen CRABIEL and MELONI

(Without Reference)

AN ACT concerning workmen's compensation, and amending section 34:15-8 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*  
2 *Jersey:*

1 1. Section 34:15-8 of the Revised Statutes is amended to read as fol-  
2 lows:

3 34:15-8. Such agreement shall be a surrender by the parties thereto of  
4 their rights to any other method, form or amount of compensation or deter-  
5 mination thereof than as provided in this article and an acceptance of all  
6 the provisions of this article, and shall bind the employee himself and for  
7 compensation for his death shall bind his personal representatives, his  
8 widow and next of kin, as well as the employer, and those conducting his  
9 business during bankruptcy or insolvency.

10 *If an injury or death is compensable under this article, [(a)] a person*  
11 *shall not be liable to anyone at common law or otherwise on account of such*  
12 *injury or death for any act or omission occurring while such person was in the*  
13 *same employ as the person injured or killed, except for intentional wrong. [;*  
14 *and (b) an employer liable for compensation under this article for such in-*  
15 *jury or death, and those conducting the business of such employer during*  
16 *bankruptcy or insolvency, shall not be liable to anyone at common law or*

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

17 *otherwise on account of such injury or death other than as specifically pro-*  
18 *vided in this article, except for intentional wrong.】*

1     2. This act shall take effect immediately, but shall not apply in the case  
2 of an injury or death for which a right to compensation under this article  
3 accrued on or before the effective date of this act.

ASSEMBLY, No. 277

STATE OF NEW JERSEY

INTRODUCED JANUARY 23, 1961

By Assemblymen CRABIEL and MELONI

(Without Reference)

AN ACT concerning workmen's compensation, and amending section 34:15-8 of  
the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*  
2 *Jersey:*

1 1. Section 34:15-8 of the Revised Statutes is amended to read as fol-  
2 lows:

3 34:15-8. Such agreement shall be a surrender by the parties thereto of  
4 their rights to any other method, form or amount of compensation or deter-  
5 mination thereof than as provided in this article and an acceptance of all  
6 the provisions of this article, and shall bind the employee himself and for  
7 compensation for his death shall bind his personal representatives, his  
8 widow and next of kin, as well as the employer, and those conducting his  
9 business during bankruptcy or insolvency.

10 *If an injury or death is compensable under this article, (a) a person*  
11 *shall not be liable to anyone at common law or otherwise on account of such*  
12 *injury or death for any act or omission occurring while such person was in*  
13 *the same employ as the person injured or killed, except for intentional wrong;*  
14 *and (b) an employer liable for compensation under this article for such in-*  
15 *jury or death, and those conducting the business of such employer during*  
16 *bankruptcy or insolvency, shall not be liable to anyone at common law or*

17 *otherwise on account of such injury or death other than as specifically pro-*  
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1     2. This act shall take effect immediately, but shall not apply in the case  
2 of an injury or death for which a right to compensation under this article  
3 accrued on or before the effective date of this act.

ASSEMBLY AMENDMENTS TO  
**ASSEMBLY, No. 277**

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**STATE OF NEW JERSEY**

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ADOPTED JANUARY 30, 1961

Amend page 1, section 1, line 10, delete "(a)".

Amend page 1, section 1, line 13, delete ";" and insert ".".

in their entirety.

Amend pages 1 and 2, section 1, lines 14-18, delete lines 14 to 18, inclusive

ASSEMBLY, No. 117

STATE OF NEW JERSEY

INTRODUCED JANUARY 12, 1960

By Assemblyman CRABIEL

Referred to Committee on Labor and Industrial Relations

AN ACT concerning workmen's compensation, and amending sections 34:15-8,  
34:15-10 and 34:15-40 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*  
2 *Jersey:*

1 1. Section 34:15-40 of the Revised Statutes is amended to read as fol-  
2 lows:

3 34:15-8. Such agreement shall be a surrender by the parties thereto of  
4 their rights to any other method, form or amount of compensation or de-  
5 termination thereof than as provided in this article and an acceptance of all  
6 the provisions of this article, and shall bind the employee himself and for  
7 compensation for his death shall bind his personal representatives, his  
8 widow and next of kin, as well as the employer, and those conducting his busi-  
9 ness during bankruptcy or insolvency.

10 *The liability of an employer prescribed by section 34:15-7 of the Re-*  
11 *vised Statutes and those conducting his business during bankruptcy or in-*  
12 *solvency, shall be exclusive and in place of any other liability whatsoever to*  
13 *such employee, his legal representative, husband or wife, parents, depend-*  
14 *ents, next of kin, and anyone otherwise entitled to recover damages, at com-*  
15 *mon law or otherwise on account of such injury or death.*

16 *The right to compensation or benefits under this article, shall be the*  
17 *exclusive remedy to an employee, his legal representative, husband or wife,*

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

18 *parents, dependents, next of kin, and anyone otherwise entitled to recover*  
19 *damages, at common law or otherwise on account of such injury or death,*  
20 *when such employee is injured or killed by the negligence or wrong of another*  
21 *in the employ of the same employer.*

1       2. Section 34:15-10 of the Revised Statutes is amended to read as fol-  
2 lows:

3       34:15-10. In the employment of minors, this article shall be presumed  
4 to apply unless the notice be given by or to the parent or guardian of the  
5 minor. If the injured employee at the time of the accident or compensable  
6 occupational disease is a minor under 14 years of age employed in violation  
7 of the labor law or a minor between 14 and 18 years of age employed, per-  
8 mitted or suffered to work without an employment certificate or special per-  
9 mit if required by law or at an occupation prohibited at the minor's age  
10 by law, a compensation or death benefit shall be payable to the employee or  
11 the dependents which shall be double the amount payable under the schedules  
12 provided in sections 34:15-12 and 34:15-13 of this Title.

13       The possession of such duly issued employment certificate shall be con-  
14 clusive evidence for an employer that the minor has reached the age certified  
15 to therein and no extra compensation shall be payable to any minor engaged  
16 in an employment allowed by the law for the age and sex certified to in  
17 such certificate. If the certificate presented by the employee as 1 issued to  
18 him shall have been really issued to another child and the real age of the  
19 employee shall be such that his employment in any capacity or in the par-  
20 ticular capacity he was employed by the employer was prohibited and if  
21 the employer shall show to the satisfaction of the Division of Workmen's  
22 Compensation that he accepted the certificate in good faith as having been  
23 issued to the employee and could not have, despite reasonable diligence, dis-  
24 covered the fraud, in such event no extra compensation shall be paid to the  
25 employee illegally employed.

26       The employer alone and not the insurance carrier shall be liable for the  
27 extra compensation or death benefit which is over and above the amount of  
28 the compensation or death benefit provided under said sections 34:15-12 or

29 34:15-13. Any provision in an insurance policy undertaking to relieve an  
30 employer from the liability for the extra compensation or extra death benefit  
31 shall be void.

32 Nothing in this chapter contained shall deprive an infant under the age of  
33 18 years of the right or rights now existing to recover damages in a com-  
34 mon law or other appropriate action or proceeding for injuries received by  
35 reason of the negligence of his or her master.

36 Nothing in this section regarding the payment of a compensation or death  
37 benefit in double the amount payable under the schedules provided in sec-  
38 tions 34:15-12 and 34:15-13 of this Title shall apply to employees, of the age  
39 of 18 years or under, employed in summer camps operated by the Boy  
40 Scouts of America, the Girl Scouts of America, the Knights of Columbus, the  
41 Young Men's Christian Association, the Young Women's Christian Associa-  
42 tion, the Young Men's Hebrew Association, or any domestic corporation or-  
43 ganized solely for religious or charitable purposes.

1 3. Section 34:15-40 of the Revised Statutes is amended to read as fol-  
2 lows:

3 34:15-40. Where a third person is liable to the employee or his depend-  
4 ents for an injury or death, the existence of a right of compensation from  
5 the employer or insurance carrier under this statute shall not operate as a  
6 bar to the action of the employee or his dependents, nor be regarded as es-  
7 tablishing a measure of damage therein. In the event that the employee or  
8 his dependents shall recover and be paid from the said third person or his  
9 insurance carrier, any sum in release or in judgment on account of his or its  
10 liability to the injured employee or his dependents, the liability of the em-  
11 ployer under this statute thereupon shall be only such as is hereinafter in  
12 this section provided.

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

16 (b) If the sum recovered by the employee or his dependents from the  
17 third person or his insurance carrier is equivalent to or greater than the lia-  
18 bility of the employer or his insurance carrier under this statute, the employer  
19 or his insurance carrier shall be released from such liability and shall be en-  
20 titled to be reimbursed, as hereinafter provided, for the medical expenses  
21 incurred and compensation payments theretofore paid to the injured employee  
22 or his dependents less employee's expenses of suit and attorney's fee as  
23 hereinafter defined.

24 (c) If the sum recovered by the employee or his dependents as afore-  
25 said is less than the liability of the employer or his insurance carrier under  
26 this statute, the employer or his insurance carrier shall be liable for the dif-  
27 ference, plus the employee's expenses of suit and attorney's fee as hereinafter  
28 defined, and shall be entitled to be reimbursed, as hereinafter provided for  
29 so much of the medical expenses incurred and compensation payments there-  
30 tofore paid to the injured employee or his dependents as exceeds the amount  
31 of such difference plus such employee's expenses of suit and attorney's fee.

32 (d) If at any time prior to the payment by the third person or his in-  
33 surance carrier to the injured employee or his dependents, the employer or  
34 his insurance carrier shall serve notice, as hereinafter provided, upon such  
35 third person or his insurance carrier that compensation has been applied for  
36 by the injured employee or his dependents it shall thereupon become the duty  
37 of such third person or his insurance carrier, before making any payment to  
38 the injured employee or his dependents, to inquire from such employer or his  
39 insurance carrier the amount of medical expenses incurred and compensation  
40 theretofore paid to the injured employee or to his dependents. Where such  
41 notice shall have been served, it shall further become the duty of such third  
42 person or his insurance carrier, before making any payment as aforesaid, to  
43 inquire from such injured employee or his dependents the amount of the ex-  
44 penses of suit and attorney's fee, or either of them in the action or settle-  
45 ment of the claim against such third person or his insurance carrier. There-  
46 after, out of that part of any amount about to be paid in release or in judgment

47 by such third person or his insurance carrier on account of his or its liability  
48 to the injured employee or his dependents, the employer or his insurance car-  
49 rier shall be entitled to receive from such third person or his insurance car-  
50 rier so much thereof as may be due the employer or insurance carrier pur-  
51 suant to subparagraph (b) or (c) of this section. Such sum shall be deducted  
52 by such third person or his insurance carrier from the sum to be paid in re-  
53 lease or in judgment to the injured employee or his dependents and shall be  
54 paid by such third person or his insurance carrier to the employer or his  
55 insurance carrier. Service of notice, hereinbefore required to be made by the  
56 employer or his insurance carrier upon such third person or his insurance  
57 carrier, shall be by registered mail, return receipt and in cases other than an  
58 individual shall be mailed to the registered office of such other third person  
59 or his insurance carrier.

60 (e) As used in this section, "expenses of suit" shall mean such expenses,  
61 but not in excess of \$200.00 and "attorney's fee" shall mean such fee, but not  
62 in excess of  $33\frac{1}{3}\%$  of that part of the sum paid in release or in judgment to  
63 the injured employee or his dependents by such third person or his insurance  
64 carrier to which the employer or his insurance carrier shall be entitled in  
65 reimbursement under the provisions of this section, but on all sums in excess  
66 thereof, this percentage shall not be binding.

67 (f) When an injured employee or his dependents fail within 1 year of the  
68 accident to either effect a settlement with the third person or his insurance  
69 carrier or institute proceedings for recovery of damages for his injuries and  
70 loss against the third person, the employer or his insurance carrier, 10 days  
71 after a written demand on the injured employee or his dependents, can either  
72 effect a settlement with the third person or his insurance carrier or institute  
73 proceedings against the third person for the recovery of damages for the in-  
74 juries and loss sustained by such injured employee or his dependents and  
75 any settlement made with the third person or his insurance carrier or pro-  
76 ceedings had and taken by such employer or his insurance carrier against  
77 such third person, and such right of action shall be only for such right of

78 action that the injured employee or his dependents would have had against  
79 the third person, and shall constitute a bar to any further claim or action by  
80 the injured employee or his dependents against the third person. If a settle-  
81 ment is effected between the employer or his insurance carrier and the third  
82 person or his insurance carrier, or a judgment is recovered by the employer  
83 or his insurance carrier against the third person for the injuries and loss  
84 sustained by the employee or his dependents and if the amount secured or  
85 obtained by the employer or his insurance carrier is in excess of the em-  
86 ployer's obligation to the employee or his dependents and the expense of  
87 suit, such excess shall be paid to the employee or his dependents. The legal  
88 action contemplated herein[above] shall be a civil action at law in the name  
89 of the injured employee or by the employer or insurance carrier in the name  
90 of the employee to the use of the employer or insurance carrier, or by the  
91 proper party for the benefit of the next of kin of the employee. Where an  
92 injured employee or his dependents have instituted proceedings for recovery  
93 of damages for his injuries and loss against a third person and such pro-  
94 ceedings are dismissed for lack of prosecution, the employer or insurance  
95 carrier shall, upon application made within 90 days thereafter, be entitled to  
96 have such dismissal set aside, and to continue the prosecution of such pro-  
97 ceedings in the name of the injured employee or dependents in accordance  
98 with the provisions of this section.

99-126 (g) If such employee or his dependents effect a settlement with the third  
127 person or his insurance carrier or institute proceedings against the third per-  
128 son prior to the service of notice upon the third person or his insurance car-  
129 rier of the compensation obligation of the employer or his insurance carrier  
130 or prior to the institution of any proceedings against the third person by the  
131 employer or his insurance carrier for the injuries and loss sustained by such  
132 employee or his dependents, such employer or his insurance carrier is barred  
133 from instituting any action or proceedings against the third person for the  
134 injuries and loss sustained by such employee or his dependents.

135 The words "third person" as used in this section include corporations,  
136 companies, associations, societies, firms, partnerships and joint stock com-  
137 panies as well as individuals *not in the employ of the same employer as the*  
138 *injured employee.*

1 4. This act shall take effect immediately.

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#### STATEMENT

The new language used in this bill is similar to that in the Workmen's Compensation Law of New York and other States.

The bill seeks to prevent common law actions by representatives of the injured person against the employer even though the injured person is receiving or is entitled to receive the benefits under the Workmen's Compensation Act by specifically limiting the employer's liability to the provisions of the act.

This bill also seeks to protect a workman from the threat of suit or from actual suit in situations where the remedy should be obtained from the employer through workmen's compensation alone, since there is a growing trend whereby a workman, after receiving benefits under the Workmen's Compensation Act, then starts a common law suit against his fellow workers, superintendent or foreman, or against the officers and directors of the company for whom he worked, thus exposing them to the expense of having to defend such suits and the possibility of having to pay substantial damages.

FILED IN STATE LIBRARY, April 17, 1961

Press Conference, March 7, 1961  
by Governor Meyner

Assembly 117, 1960 session - Precludes common law action  
against fellow employee where injured worker eligible for  
workmen's compensation. Fails to exclude intentional injuries  
and to cover action against both fellow employee and stranger.  
New bill drawn -- and enacted this session (A-277)