

34:15-40

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2007 **CHAPTER:** 23

NJSA: 34:15-40 (Search Concerns employee expenses in suits against third parties in workers' compensation cases)

BILL NO: A2336

SPONSOR(S): Bramnick and Cohen

DATE INTRODUCED: February 6, 2006

COMMITTEE: **ASSEMBLY:** Labor

SENATE: Labor

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 22, 2006

SENATE: December 14, 2006

DATE OF ENACTEMENT: January 26, 2007

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (First reprint enacted)

[SPONSOR'S STATEMENT](#): (Begins on page 4 of original bill) [Yes](#)

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

P.L. 2007, CHAPTER 23, *approved January 26, 2007*
Assembly, No. 2336 (*First Reprint*)

1 AN ACT concerning employee expenses in suits against third parties
2 in 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 from
24 the third person or his insurance carrier is equivalent to or greater
25 than the liability of the employer or his insurance carrier under this
26 statute, the employer or his insurance carrier shall be released from
27 such liability and shall be entitled to be reimbursed, as hereinafter
28 provided, for the medical expenses incurred and compensation
29 payments theretofore paid to the injured employee or his
30 dependents less employee's expenses of suit and attorney's fee as
31 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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALA committee amendments adopted March 9, 2006.

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

30 (e) As used in this section, "expenses of suit" shall mean such
31 expenses, but not in excess of ~~[\$200.00,]~~ '~~[\$1,000]~~ \$750' and
32 "attorney's fee" shall mean such fee, but not in excess of 33 1/3 %
33 of that part of the sum paid in release or in judgment to the injured
34 employee or his dependents by such third person or his insurance
35 carrier to which the employer or his insurance carrier shall be
36 entitled in reimbursement under the provisions of this section, but
37 on all sums in excess thereof, this percentage shall not be binding.

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

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

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

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

40 (cf: P.L.1956, c.141, s.6)

41

42 2. This act shall take effect immediately.

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47 Concerns employee expenses in suits against third parties in
48 workers' compensation cases.

ASSEMBLY, No. 2336

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED FEBRUARY 6, 2006

Sponsored by:

Assemblyman JON M. BRAMNICK

District 21 (Essex, Morris, Somerset and Union)

Assemblyman NEIL M. COHEN

District 20 (Union)

SYNOPSIS

Concerns employee expenses in suits against third parties in workers' compensation cases.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/10/2006)

1 AN ACT concerning employee expenses in suits against third parties
2 in 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 from
24 the third person or his insurance carrier is equivalent to or greater
25 than the liability of the employer or his insurance carrier under this
26 statute, the employer or his insurance carrier shall be released from
27 such liability and shall be entitled to be reimbursed, as hereinafter
28 provided, for the medical expenses incurred and compensation
29 payments theretofore paid to the injured employee or his
30 dependents less employee's expenses of suit and attorney's fee as
31 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

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

30 (e) As used in this section, "expenses of suit" shall mean such
31 expenses, but not in excess of ~~[\$200.00,]~~ \$1,000 and "attorney's
32 fee" shall mean such fee, but not in excess of 33 1/3 % of that part
33 of the sum paid in release or in judgment to the injured employee or
34 his dependents by such third person or his insurance carrier to
35 which the employer or his insurance carrier shall be entitled in
36 reimbursement under the provisions of this section, but on all sums
37 in excess thereof, this percentage shall not be binding.

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

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

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

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

40 (cf: P.L.1956, c. 141, s. 6)

41

42 2. This act shall take effect immediately.

43

44

45

STATEMENT

46

47 This bill provides that if an employer is reimbursed for workers'
48 compensation payments from a sum recovered by an injured

1 employee from a third party found liable in connection with the
2 employee's accident, the amount reimbursed to the employer shall
3 be reduced by the amount, up to \$1,000, for all expenses of the suit,
4 other than attorney's fees, incurred by the employee in conducting
5 the suit against the third party.

6 Current law provides that the amount reimbursed to the employer
7 may not be reduced by more than \$200 for employee expenses in a
8 third party suit (other than attorney's fees), no matter how large
9 those expenses are. The reduced reimbursement to the employer
10 caused by raising the limit of the amount of deducted expenses from
11 \$200 to \$1,000 would benefit the injured employee, not providers of
12 legal services, and would in no case reduce the total amount paid to
13 the injured employee from workers' compensation benefits and the
14 third party settlement. The \$200 limit has not been increased since
15 1936.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2336

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 9, 2006

The Assembly Labor Committee reports favorably Assembly Bill No.2336, with committee amendments.

As amended by the committee, this bill provides that if an employer is reimbursed for workers' compensation payments from a sum recovered by an injured employee from a third party found liable in connection with the employee's accident, the amount reimbursed to the employer shall be reduced by the amount, up to \$750, for all expenses of the suit, other than attorney's fees, incurred by the employee in conducting the suit against the third party.

Current law provides that the amount reimbursed to the employer may not be reduced by more than \$200 for employee expenses in a third party suit (other than attorney's fees), no matter how large those expenses are. The reduced reimbursement to the employer caused by raising the limit of the amount of deducted expenses from \$200 to \$750 would benefit the injured employee, not providers of legal services, and would in no case reduce the total amount paid to the injured employee from workers' compensation benefits and the third party settlement. The \$200 limit has not been increased since 1936.

The committee amendments provide that the maximum reduction of amount reimbursed to employers to cover employee costs is \$750. Without the amendments, the bill set the maximum reduction at \$1,000.

SENATE LABOR COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2336

STATE OF NEW JERSEY

DATED: NOVEMBER 13, 2006

The Senate Labor Committee reports favorably Assembly Bill No. 2336 (1R).

The bill provides that if an employer is reimbursed for workers' compensation payments from a sum recovered by an injured employee from a third party found liable in connection with the employee's accident, the amount reimbursed to the employer shall be reduced by the amount, up to \$750, for all expenses of the suit, other than attorney's fees, incurred by the employee in conducting the suit against the third party.

Current law provides that the amount reimbursed to the employer may not be reduced by more than \$200 for employee expenses in a third party suit (other than attorney's fees), no matter how large those expenses are. The reduced reimbursement to the employer caused by raising the limit of the amount of deducted expenses from \$200 to \$750 would benefit the injured employee, not providers of legal services, and would in no case reduce the total amount paid to the injured employee from workers' compensation benefits and the third party settlement. The \$200 limit has not been increased since 1936.