

5376

2013-2014 Regular Sessions

I N S E N A T E

May 16, 2013

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to providing incentives for productive workers' compensation audits

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The workers' compensation law is amended by adding a new
2 section 112-a to read as follows:
3 S 112-A. AUDITS OF EMPLOYERS. 1. (A) EMPLOYERS IN ALL CLASSES OTHER
4 THAN THE CONSTRUCTION CLASS SHALL BE AUDITED NOT LESS FREQUENTLY THAN
5 BIENNIALY AND THE CHAIR OR BOARD MAY PROVIDE FOR MORE FREQUENT AUDITS
6 OF EMPLOYERS IN SPECIFIED CLASSIFICATIONS BASED ON FACTORS SUCH AS
7 AMOUNT OF PREMIUM, TYPE OF BUSINESS, LOSS RATIOS, OR OTHER RELEVANT
8 FACTORS. IN NO EVENT SHALL EMPLOYERS IN THE CONSTRUCTION CLASS, GENERAT-
9 ING MORE THAN THE AMOUNT OF PREMIUM REQUIRED TO BE EXPERIENCE RATED, BE
10 AUDITED LESS FREQUENTLY THAN ANNUALLY. THE ANNUAL AUDITS REQUIRED FOR
11 CONSTRUCTION CLASSES MAY CONSIST OF PHYSICAL ONSITE AUDITS. AT THE
12 COMPLETION OF AN AUDIT, IF REQUESTED BY THE AUDITOR, THE EMPLOYER OR
13 OFFICER OF THE CORPORATION AND THE AUDITOR MUST PRINT AND SIGN THEIR
14 NAMES ON THE AUDIT DOCUMENT AFFIRMING THE ACCURACY OF THE INFORMATION
15 PROVIDED THEREIN. AS REQUIRED BY SECTION ONE HUNDRED TWELVE OF THIS
16 ARTICLE, EMPLOYERS SHALL MAKE AVAILABLE ALL BOOKS AND RECORDS NECESSARY
17 FOR THE PAYROLL VERIFICATION AUDIT AND PERMIT THE AUDITOR TO MAKE A
18 PHYSICAL INSPECTION OF THE EMPLOYER'S OPERATION. IF AN EMPLOYER FAILS
19 TO PROVIDE REASONABLE ACCESS TO ALL SUCH BOOKS AND RECORDS NECESSARY FOR
20 A PAYROLL VERIFICATION AUDIT, INCLUDING A PHYSICAL INSPECTION OF THE
21 EMPLOYER'S OPERATION, THE EMPLOYER SHALL PAY AN ADDITIONAL PREMIUM TO
22 THE CARRIER OF THREE TIMES THE MOST RECENT ESTIMATED ANNUAL PREMIUM.
23 (B) IF AN EMPLOYER KNOWINGLY UNDERSTATES OR KNOWINGLY CONCEALS
24 PAYROLL, KNOWINGLY MISREPRESENTS OR KNOWINGLY CONCEALS EMPLOYEE DUTIES
25 SO AS TO AVOID PROPER CLASSIFICATION FOR PREMIUM CALCULATIONS, OR KNOW-

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

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1 INGLY MISREPRESENTS OR KNOWINGLY CONCEALS INFORMATION PERTINENT TO THE
2 COMPUTATION AND APPLICATION OF AN EXPERIENCE RATING MODIFICATION FACTOR,
3 SAID KNOWING MISREPRESENTATIONS OR KNOWING CONCEALMENTS SHALL BE CONSID-
4 ERED FRAUDULENT PRACTICES IN VIOLATION OF APPLICABLE PROVISIONS OF
5 SECTION ONE HUNDRED FOURTEEN OF THIS ARTICLE AND INSURANCE FRAUD IN
6 VIOLATION OF APPLICABLE PROVISIONS OF SECTION 176.05 OF THE PENAL LAW.

7 2. THIS SECTION SHALL NOT APPLY TO EMPLOYERS THAT SELF-INSURE OR
8 EMPLOYERS THAT ARE MEMBERS OF A WORKERS' COMPENSATION GROUP SELF-INSURED
9 TRUST.

10 3. FOR THE PURPOSES OF THIS SECTION, "CONSTRUCTION CLASS" MEANS THE
11 WORK OR OCCUPATION DESCRIBED IN "GROUP 3" OF SECTION THREE OF THIS CHAP-
12 TER.

13 S 2. This act shall take effect immediately.