STATE OF NEW YORK

52--A

2023-2024 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 4, 2023

Introduced by M. of A. MAGNARELLI -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, the workers' compensation law, the volunteer firefighters' benefit law, the volunteer ambulance workers' benefit law, and the general municipal law, in relation to deductibles offered by public group self-insurers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The opening paragraph of section 3443 of the insurance law, as added by chapter 924 of the laws of 1990, is amended to read as follows:

An insurer issuing a workers' compensation and employers' liability insurance policy, [~~and a group self-insurer for municipal corporations as defined in subdivision three-a of section fifty of the workers' compensation law,~~] may offer, as part of the policy or by endorsement, deductibles optional to the policyholder for benefits payable under the policy, subject to approval by the superintendent and subject to underwriting by the insurer, consistent with the following standards or factors:

§ 2. Subparagraph (a) of paragraph 2 of subdivision 3-a of section 50 of the workers' compensation law, as amended by section 4 of part G of chapter 57 of the laws of 2011, is amended and a new subparagraph (a-1) is added to read as follows:

(a) Any group consisting exclusively of such employers may adopt a plan for self-insurance, as a group, for the payment of compensation under this chapter to their employees, except that no new groups may adopt such a plan, and no group not composed solely of public entities set forth in subparagraph (a-1) of this paragraph [~~a of subdivision four of this section~~] may insure any liabilities for any employers on and

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

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after January first, two thousand twelve, except as provided for in paragraph ten of this subdivision. Under such plan the group shall assume the liability of all the employers within the group and pay all compensation for which the said employers are liable under this chapter, except that in the case of [~~municipal corporations~~] public group self-insurers as [~~herein~~] defined in subparagraph (a-1) of this paragraph no proof of financial ability or deposit of securities or cash need be made in compliance with this subdivision. The group qualifying under this subdivision shall be known as a group self-insurer and the employers participating therein and covered thereby shall be known as members.

(a-1) Any group consisting exclusively of public corporations as defined in section sixty-six of the general construction law, county self-insurance plans established under article five of this chapter, boards of cooperative educational services and consortia established by boards of cooperative educational services may adopt a plan for self-insurance, as a group, for the payment of compensation under this chapter to their employees. Such a group shall be known as a "public group self-insurer". A county self-insurance plan established under article five of this chapter is not itself a public group self-insurer and is not itself subject to the requirements of this section, but may join a public group self-insurer and, if it does so, shall assume all of the obligations of its participants to the public group self-insurer. An entity which is not a public corporation as defined in section sixty-six of the general construction law, a county self-insurance plan established under article five of this chapter, a board of cooperative educational services or a consortium established by a board of cooperative educational services may join a public group self-insurer only if it has the authority to levy taxes or is otherwise directly capable of generating revenue or its obligations are guaranteed by another member which is such a public corporation. A public group self-insurer shall comply with all of the requirements of this subdivision, including any obligations imposed upon a group administrator, but is not required to secure the services of a group administrator or obtain a license authorizing it to act as a group self-insurer administrator, to furnish satisfactory proof to the chair of its financial ability to pay compensation from its revenues, their source and assurance of continuance, to pay a license fee, or to deposit securities, post a bond or provide other security, except as specifically provided in this subdivision.

§ 3. Subdivision 3-a of section 50 of the workers' compensation law is amended by adding a new paragraph 3-a to read as follows:

(3-a) If the chair determines that a public group self-insurer has become insolvent, the chair shall pay the compensation and benefits that would otherwise have been required to be paid by the members of the public group self-insurer from administration expenses as provided in section one hundred fifty-one of this chapter upon audit and warrant of the comptroller and upon vouchers approved by the chair, which payments shall be considered expenses of administration. For purposes of this paragraph, a public group self-insurer is insolvent when the value of the public group self-insurer's assets is less than the total costs of the workers' compensation liabilities that it is anticipated the public group self-insurer will be required to pay within the succeeding six months or that the compensation and benefits provided by this chapter may be unpaid by reason of the default of a public group self-insurer. Upon the insolvency of a public group self-insurer, each member shall assume responsibility for the continued administration and payment of all claims against it, provided however that the public group self-insurer shall, within thirty days, turn its assets over to the chair and the chair shall assume the administration and cost of the claims of the public group self-insurer for a period not to exceed one year. During the period of chair administration of claims, each member of the public group self-insurer shall secure the services of a licensed claims administrator and the chair shall segregate the claims obligations of the insolvent public group self-insurer by member, and, if necessary segregate an adequate claim reserve for any claims of defunct or insolvent members of the insolvent public group self-insurer. Not later than one year from the assumption of the administration of the claims of the public group self-insurer, each member of the insolvent public group self-insurer shall resume administration of its own claims and the chair shall return to each member whatever pro rata share of the public group self-insurer's assets remain after the period of chair administration. The chair shall be reimbursed for any payment made under this paragraph by the public group self-insurer itself and, if the public group self-insurer is unable to reimburse the chair fully for payments made by the chair, then by the member of the public group self-insurer against which the claim is asserted. Further, nothing herein shall preclude the chair from directing that an underfunded public group self-insurer levy an assessment on its members as part of a plan for achieving fully funded status which may include a deficit assessment on members of such group self-insurer which shall be subject to approval or modification by the chair. No member shall be liable for any obligations of the public group self-insurer or any obligations of any member of the public group self-insurer. The chair shall require any member that has pending claims but has failed to secure the services of a licensed claims administrator to resume administration of the claims to pay to the chair any expenses the chair incurs in administering and paying those claims.

§ 4. Paragraph (g) of subdivision 3-e of section 50 of the workers' compensation law, as added by chapter 729 of the laws of 1993, is amended and a new paragraph (h) is added to read as follows:

(g) The state insurance fund[~~,~~] and any other insurer [~~or any group self-insurer for municipal corporations as defined in subdivision three-a of this section~~] may, at its option, offer a deductible in an amount specified in paragraph (c) of this subdivision to any policyholder who is not otherwise eligible for a deductible under this subdivision. A public group self-insurer may offer a deductible in accordance with paragraph (h) of this subdivision.

(h) A public group self-insurer which has been providing workers' compensation and employers' liability coverage for not less than five years and is operated as a self-administered not-for-profit corporation governed by a board not less than two-thirds of the members of which are representatives of members of the public group self-insurer, and all of the officers of which are representatives of members of the public group self-insurer may, upon a determination by the chair that the methodology used by the public group self-insurer in creating its deductible rating plan is supported by an actuarial analysis prepared by an independent, qualified actuary who is a member of the casualty actuarial society that clearly identifies the actuary's rate assumptions, and subject to underwriting by the public group self-insurer, offer as part of the policy or by endorsement, deductibles optional to the member, not subject to the foregoing monetary limits, consistent with the following:

(1) claimants' rights are properly protected, and claimants' benefits are paid without regard to any such deductible;

(2) appropriate premium reductions reflect the type and level of any deductible approved by the chair and selected by the member;

(3) premium reductions for deductibles are determined before application of any experience modification, premium surcharge, or premium discount;

(4) recognition is given to member's characteristics, including size, financial capabilities, nature of activities, and number of employees;

(5) if the member selects a deductible, the member is liable to the public group self-insurer for the deductible amount in regard to benefits paid for compensable claims;

(6) the public group self-insurer pays all of the deductible amount, applicable to a compensable claim, to the person or provider entitled to benefits and then seeks reimbursement from the member for the applicable deductible amount;

(7) a failure by the member to reimburse deductible amounts to the public group self-insurer is treated in the same manner as nonpayment of the member's contribution;

(8) the public group self-insurer shall be fully-funded as defined in subparagraph (b) of paragraph two of subdivision three-a of this section and if, after offering deductible policies, the public group self-insurer ceases to be fully funded as so defined, the public group self-insurer may not permit any new member to elect the deductible option until the public group self-insurer becomes fully funded;

(9) the public group self-insurer may add no more than seven new deductible members in any one contribution year;

(10) the aggregate contributions for all new members selecting the deductible option in any one year may not exceed ten percent of the total contributions of all of the public group self-insurer's members for the immediately prior year;

(11) if the member was self-insured prior to joining the public group self-insurer, the member's deductible amount during the member's first year of membership in the public group self-insurer may not exceed the amount of the member's reinsurance retention level immediately before joining the public group self-insurer;

(12) each member which has elected the deductible option shall: (i) maintain in a dedicated account held by the public group self-insurer an amount actuarially determined to be sufficient to pay the portion of each compensation claim that is within the deductible amount for the succeeding three months; and (ii) maintain in its own dedicated reserve account or in its own undesignated fund balance, the actuarially-determined amount that the member will be required to pay for all of the member's claims below the deductible amount; and

(13) the public group self-insurer shall provide to all members of the public group self-insurer an annual statement identifying the contributions provided by and the reserves attributable to the members which have elected a deductible and must provide to each member of the public group self-insurer which has elected the deductible option an annual actuarial analysis of the member's open claims, stating the amounts the public group self-insurer anticipates that the member will be required to pay for the life of each claim.

§ 5. Section 70 of the workers' compensation law, as added by chapter 849 of the laws of 1955, is amended to read as follows:

§ 70. Excess or catastrophe insurance; public group self-insurance plans. 1. The committee or administrator, subject to the approval of the board of supervisors, may on behalf of the plan purchase excess or catastrophe insurance. The cost of such insurance shall be an administrative expense of the plan.

2. The committee or administrator, subject to the approval of the board of supervisors, may on behalf of the plan join a public group self-insurer established under subdivision three-a of section fifty of this chapter. Notwithstanding any other provision of this chapter, when the committee or administrator contracts on behalf of the plan to join a public group self-insurer:

a. the public group self-insurer, the county and each participant shall remain liable in the manner provided in the plan for claims made prior to the date on which the plan joins the public group self-insurer; and

b. the committee or administrator shall establish, before the plan joins the public group self-insurer, a method, which may be amended annually thereafter, by which to apportion among the participants in the plan the cost of its membership in the public group self-insurer and all claims made after the date on which the plan joins the public group self-insurer, and each participant in the plan shall pay its respective share of the cost to the county treasurer, who shall pay the public group self-insurer on behalf of all plan participants.

§ 6. Subdivision 9 of section 30 of the volunteer firefighters' benefit law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

9. Insurance authorized to be purchased pursuant to subdivision eight of this section may be secured from the state fund or any stock corporation, mutual corporation or reciprocal insurer authorized to transact the business of workers' compensation in this state. If such insurance is not secured, the political subdivision liable shall be deemed to have elected to be a self-insurer unless it is a participant in a county plan of self-insurance or its liability for benefits under this chapter is covered by a town's participation in a county plan of self-insurance as provided in subdivision three of section sixty-three of the workers' compensation law **or is a participant in a public group self-insurance plan established under subdivision three-a of section fifty of the workers' compensation law**. Every such self-insurer shall file with the chair of the workers' compensation board a notice of such election prescribed in form by such chair. For failure to file such notice within ten days after such election is made, the treasurer or other fiscal officer of such political subdivision shall be liable to pay to the chair of the workers' compensation board the sum of one hundred dollars as a penalty, to be transferred to the state treasury. A notice of election to be a self-insurer for compensation and benefits to volunteer firefighters under the provisions of the workers' compensation law and the general municipal law in effect prior to March first, nineteen hundred fifty-seven, which was filed prior to such date pursuant to the provisions of subdivision four of section fifty of the workers' compensation law as in effect prior to such date shall be deemed to be a notice of election filed under this section unless the chair of the workers' compensation board is notified to the contrary. The provisions of subdivision five of section fifty of the workers' compensation law shall be applicable to such self-insurers.

§ 7. Subdivision 8 of section 30 of the volunteer ambulance workers' benefit law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

8. Insurance authorized to be purchased pursuant to subdivision seven of this section may be secured from the state fund or any stock corpo-

ration, mutual corporation, group self-insurers or reciprocal insurer authorized to transact the business of workers' compensation in this state. If such insurance is not secured, the political subdivision liable shall be deemed to have elected to be a self-insurer unless it is a participant in a county plan of self-insurance or its liability for benefits under this chapter is covered by a town's participation in a county plan of self-insurance as provided in subdivision nine of section sixty-three of the workers' compensation law **or is a participant in a public group self-insurance plan established under subdivision three-a of section fifty of the workers' compensation law**. Every such self-insurer shall file with the chair of the workers' compensation board a notice of such election prescribed in form by such chair. For failure to file such notice within ten days after such election is made, the treasurer or other fiscal officer of such political subdivision shall be liable to pay to the chair of the workers' compensation board the sum of one hundred dollars as a penalty, to be transferred to the state treasury. A notice of election to be a self-insurer for compensation and benefits to volunteer ambulance workers under the provisions of the workers' compensation law and the general municipal law in effect prior to March first, in the year of enactment of this chapter, which was filed prior to such date pursuant to the provisions of subdivision four of section fifty of the workers' compensation law as in effect prior to such date shall be deemed to be a notice of election filed under this section unless the chair of the workers' compensation board is notified to the contrary. The provisions of subdivision five of section fifty of the workers' compensation law shall be applicable to such self-insurers.

§ 8. Paragraph b of subdivision 2 of section 119-o of the general municipal law, as amended by chapter 681 of the laws of 1961, is amended to read as follows:

b. The manner of employing, engaging, compensating, transferring or discharging necessary personnel, subject, however, to the provisions of the civil service law where applicable; the making of employer's contributions for retirement, social security, health insurance, [~~workmen's~~] **workers'** compensation**, volunteer firefighter and volunteer ambulance worker benefits, including participation in a public group self-insurer,** and other similar benefits; the approval of attendances at conventions, conferences and schools for public officials and the approval and payment of travel and other expenses incurred in the performance of official duties; the bonding of designated officers and employees; the filing of oaths of office and resignations consistent with general laws applicable thereto; provisions that for specific purposes designated officers or employees of the joint service or a joint water, sewage or drainage project shall be deemed those of a specified participating corporation or district; and provisions that personnel assigned to a joint service or a joint water, sewage or drainage project shall possess the same powers, duties, immunities and privileges they would ordinarily possess (1) if they performed their duties only in the corporation or district by which they are employed or (2) if they were employed by the corporation or district in which they are required to perform their duties.

§ 9. This act shall take effect immediately.