S T A T E O F N E W Y O R K

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I N S E N A T E

February 6, 2009

Introduced by Sens. DUANE, ADAMS, BRESLIN, KRUEGER, SAMPSON, SCHNEIDERMAN -- 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 enacting the "protection in the workplace act"

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

Section 1. Short title. This act shall be known and may be cited as the "protection in the workplace act".

S 2. Legislative intent. It is the finding of this legislature that violence in the workplace has become an increasingly serious occupational hazard, which all too many employees and employers must confront. While it is the intent of the workers' compensation system to provide medical aid and monetary compensation to injured workers or their survivors in return for the surrender of their right to petition the courts, it is the finding of this body that rape, sexual assault or other sex crimes should not be classified as a condition of employment at the expenses of the workers' compensation systems' ameliorative goals and that such system is not and should not be used as a shield to permit employers whose negligent acts or omissions cause injury or harm to fellow employees without such injured employees having every opportunity for full and adequate redress. For purposes of determining benefits pursuant to the workers' compensation law, sexual assault is not, and shall not be considered a condition of employment.

It is therefore the intent of this legislation to ensure that workers suffering sexual assault in the workplace due to the derelict or negligent practices of their employer, receive appropriate medical care and benefits but also have every opportunity to recover all damages commensurate with their injury.

S 3. The workers' compensation law is amended by adding a new section 10-a to read as follows:

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

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S 10-A. LIABILITY RESULTING FROM SEXUAL OFFENSES. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ANY EMPLOYEE SUFFERING INJURY OR PERSONAL INJURY PURSUANT TO SUBDIVISION SEVEN OF SECTION TWO OF THIS CHAPTER AS A CONSEQUENCE OF A SEXUAL OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW DUE TO NEGLIGENT ACTS OR OMISSIONS OF THE EMPLOYER SHALL BE ENTITLED TO ALL RIGHTS AND BENEFITS AVAILABLE PURSUANT TO THIS CHAPTER AND, IN ADDITION MAY PURSUE ANY REMEDY AVAILABLE IN EQUITY OR AT LAW, FOR COMPENSATION FOR ANY AND ALL DAMAGES RESULTING FROM SUCH INJURY.

S 4. Section 11 of the workers' compensation law, as amended by chapter 635 of the laws of 1996, the opening paragraph as amended by chapter 169 of the laws of 2007, the fifth undesignated paragraph as added by chapter 49 of the laws of 1999 and the closing paragraph as added by chapter 392 of the laws of 2008, is amended to read as follows:

S 11. Alternative remedy. 1. The liability of an employer prescribed by [the last preceding] section TEN OF THIS ARTICLE shall be exclusive and in place of any other liability whatsoever, to such employee, his or her personal representatives, spouse, parents, dependents, distributees, or any person otherwise entitled to recover damages, contribution or indemnity, at common law or otherwise, on account of such injury or death or liability arising therefrom, except that if an employer fails to secure the payment of compensation for his or her injured employees and their dependents as provided in section fifty of this chapter, an injured employee, or his or her legal representative in case of death results from the injury, may, at his or her option, elect to claim compensation under this chapter, or to maintain an action in the courts for damages on account of such injury; and in such an action it shall not be necessary to plead or prove freedom from contributory negligence nor may the defendant plead as a defense that the injury was caused by the negligence of a fellow servant nor that the employee assumed the risk of his or her employment, nor that the injury was due to the contributory negligence of the employee. The liability under this chapter of The New York Jockey Injury Compensation Fund, Inc. created under section two hundred [thirteen-a] TWENTY-ONE of the racing, pari-mutuel wagering and breeding law shall be limited to the provision of workers' compensation coverage to jockeys, apprentice jockeys and exercise persons licensed under article two or four of the racing, pari-mutuel wagering and breeding law and any statutory penalties resulting from the failure to provide such coverage.

2. For purposes of this section the terms "indemnity" and "contribution" shall not include a claim or cause of action for contribution or indemnification based upon a provision in a written contract entered into prior to the accident or occurrence by which the employer had expressly agreed to contribution to or indemnification of the claimant or person asserting the cause of action for the type of loss suffered.

3. An employer shall not be liable for contribution or indemnity to any third person based upon liability for injuries sustained by an employee acting within the scope of his or her employment for such employer unless such third person proves through competent medical evidence that such employee has sustained a "grave injury" which shall mean only one or more of the following: death, permanent and total loss of use or amputation of an arm, leg, hand or foot, loss of multiple fingers, loss of multiple toes, paraplegia or quadriplegia, total and permanent blindness, total and permanent deafness, loss of nose, loss of ear, permanent and severe facial disfigurement, loss of an index finger

or an acquired injury to the brain caused by an external physical force resulting in permanent total disability.

4. For purposes of this section "person" means any individual, firm, company, partnership, corporation, joint venture, joint-stock association, association, trust or legal entity.

5. The liability under this chapter of the New York black car operators' injury compensation fund, inc. shall be limited to: (i) securing the payment of workers' compensation in accordance with article six-F of the executive law to black car operators, as defined in such article, whose injury arose out of and in the course of providing services for a central dispatch facility, as defined in such article, that is a registered member of such fund, and (ii) any statutory penalty resulting from the failure to secure such payment. The liability under this chapter of a central dispatch facility, as defined in article six-F of the executive law, that is a registered member of the New York black car operators' injury compensation fund, inc. that shall be limited to remaining a registered member in good standing of such fund and any statutory penalty, including loss of immunity provided by this section, resulting from the failure to become or remain a registered member in good standing of such fund, except, however, that such central dispatch facility shall be subject to the provisions of section one hundred thirty-one of this chapter and shall be liable for any payments for which it may become responsible pursuant to such section or pursuant to section fourteen-a of this [chapter] ARTICLE.

6. The liability under this chapter of the New York independent livery driver benefit fund, inc. shall be limited to: (i) securing the payment of workers' compensation coverage to cover those matters required by article six-G of the executive law for independent livery drivers, as defined in such article, whose injury arose out of and in the course of providing covered services for a livery base, as defined in such article, that is a registered member of such fund, and (ii) any statutory penalty resulting from the failure to secure such payment.

7. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN EMPLOYEE SUFFERING AN INJURY OR PERSONAL INJURY AS A RESULT OF A SEXUAL OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW, DUE TO NEGLIGENT ACTS OR OMISSIONS OF THE EMPLOYER SHALL BE ENTITLED TO ALL RIGHTS AND BENEFITS AVAILABLE PURSUANT TO THIS CHAPTER AND, IN ADDITION MAY PURSUE ANY REMEDY AVAILABLE IN EQUITY OR AT LAW FOR COMPENSATION FOR DAMAGES RESULTING FROM SUCH INJURY. ANY INSURANCE CARRIER PROVIDING WORKERS' COMPENSATION BENEFITS PURSUANT TO THIS SECTION SHALL BE ENTITLED TO A LIEN ON ANY DAMAGES AWARDED PURSUANT TO THIS SECTION, PROVIDED THAT NO SUCH LIEN SHALL BE IN AN AMOUNT GREATER THAN THE AMOUNT OF BENEFITS PAID BY SUCH INSURANCE CARRIER.

S 5. Subdivision 6 of section 29 of the workers' compensation law, as amended by chapter 635 of the laws of 1996, is amended to read as follows:

6. The right to compensation or benefits under this chapter, shall be the exclusive remedy to an employee, or in case of death his or her dependents, when such employee is injured or killed by the negligence or wrong of another in the same employ, UNLESS SUCH EMPLOYEE WAS INJURED OR KILLED AS A CONSEQUENCE OF A SEXUAL OFFENSE, AS DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW, the employer's insurer or any collective bargaining agent of the employer's employees or any employee, of such insurer or such collective bargaining agent (while acting within the scope of his or her employment). The limitation of liability of an employer set forth in section eleven of this article for the injury or

death of an employee shall be applicable to another in the same employ, the employer's insurer, any collective bargaining agent of the employer's employees or any employee of the employer's insurer or such collective bargaining agent (while acting within the scope of his or her employment). The option to maintain an action in the courts for damages based on the employer's failure to secure compensation for injured employees and their dependents as set forth in section eleven of this article shall not be construed to include the right to maintain an action against another in the same employ, the employer's insurer, any collective bargaining agent of the employer's employees or any employee of the employer's insurer or such collective bargaining agent (while acting within the scope of his or her employment).

S 6. This act shall take effect immediately; provided that the amendments to subdivision 6 of section 11 of the workers' compensation law made by section four of this act shall take effect on the same date and in the same manner as section 9 of chapter 392 of the laws of 2008 takes effect.