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

5234

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. SAVINO -- 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 the assessment upon self-insurers, the state insurance fund, and all insurance carriers to fund the special disability fund

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

Section 1. Subparagraph 4 of paragraph (h) of subdivision 8 of section 15 of the workers' compensation law, as amended by chapter 139 of the laws of 2008, is amended to read as follows:

(4) As soon as practicable after May first in the year nineteen hundred fifty-eight, and annually thereafter as soon as practicable after January first in each succeeding year, the chair of the board shall assess upon and collect from all self-insurers, except group self-insurers, the state insurance fund, all insurance carriers and group self-insurers, (A) a sum equal to one hundred [fifty] TEN per centum of the total disbursements made from the special disability fund during the preceding calendar year (not including any disbursements made on account of anticipated liabilities or waiver agreements funded by bond proceeds and related earnings), less the amount of the net assets in such fund as of December thirty-first of said preceding calendar year, and (B) a sum sufficient to cover debt service, and associated costs (the "debt service assessment") to be paid during the calendar year by the dormitory authority, as calculated in accordance with subparagraph five of this paragraph. Such assessments shall be allocated to (i) self-insurers except group self-insurers and the state insurance fund based upon the proportion that the total compensation payments made by all self-insurers except group self-insurers and the state insurance fund bore to the total compensation payments made by all self-insurers except group self-insurers, the state insurance fund, all insurance carriers and group self-insurers, (ii) insurance carriers based upon the proportion that

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

LBD06968-01-9

the total compensation payments made by all insurance carriers bore to the total compensation payments by all self-insurers except group self-insurers, the state insurance fund and all insurance carriers and group self-insurers during the fiscal year which ended within said preceding calendar year, and (iii) group self-insurers based upon the proportion that the total compensation payments made by all group self-insurers bore to the total compensation payments made by all self-insurers, the state insurance fund and all insurance carriers during the fiscal year which ended within said preceding calendar year. Insurance carriers and self-insurers shall be liable for all such assessments regardless of the date on which they came into existence, or whether they have made any claim for reimbursement from the special disability fund. The portion of such sum allocated to self-insurers except group self-insurers and the state insurance fund that shall be collected from each self-insurer except a group self-insurer and the state insurance fund shall be a sum equal to the proportion of the amount which the total compensation payments of each such self-insurer except a group self-insurer or the state insurance fund bore to the total compensation payments made by all self-insurers except group self-insurers and the state insurance fund during the fiscal year which ended within said preceding calendar year. The portion of such sum allocated to insurance carriers that shall be collected from each insurance carrier shall be a sum equal to that proportion of the amount which the total premiums written by each such insurance carrier bore to the total written premiums reported by all insurance carriers during the fiscal year which ended within said preceding calendar year. The portion of such sum allocated to group self-insurers that shall be collected from each group self-insurer shall be a sum equal to that proportion of the amount which the pure premium calculation for each such group self-insurer bore to the total pure premium calculation for all group self-insurers for the calendar year which ended within the preceding state fiscal year. The payments from the debt service assessment, unless otherwise set forth in the special disability fund financing agreement, are hereby pledged therefor and shall be deemed the first monies received on account of assessments in each year. For the purposes of this paragraph, "direct premiums written" means gross premiums, including policy and membership fees, less return premiums and premiums on policies not taken. For purposes of this paragraph "pure premium calculation" means the New York state annual payroll as of December thirty-first of the preceding year by class code for each employer member of a group self-insurer multiplied by the applicable loss cost for each class code as determined by the workers' compensation rating board in effect on December thirty-first of the preceding year, and for a group or individual self-insurer who has ceased to self-insure shall be based on payroll at the time the group or individual self-insurer ceased to self-insure reduced by a factor reflecting the reduction in the group or individual self-insurer's self-insurance liabilities since ceasing to self-insure. An employer who has ceased to be a self-insurer or a group that ceases to be licensed as a group self-insurer shall continue to be liable for any assessments into said fund on account of any compensation payments made by him or her on his or her account during such fiscal year, and the security fund, created under the provisions of section one hundred seven of this chapter, shall, in the event of the insolvency of any insurance company, be liable for any assessments that would have been made against such company except for its insolvency. No assessment shall be payable from the aggregate trust fund, created under the provisions of section twenty-seven of this article, but such fund shall continue to be liable for all compensation that shall be payable under any award or order of the board, the commuted value of which has been paid into such fund. Such assessments when collected shall be deposited with the commissioner of taxation and finance for the benefit of such fund. Unless otherwise provided, such assessments, shall not constitute an element of loss for the purpose of establishing rates for compensation insurance but shall for the purpose of collection be treated as separate costs by carriers. All insurance carriers and the state insurance fund, shall collect such assessments, from their policyholders through a surcharge based on premiums in accordance with rules set forth by the New York workers' compensation rating board, as approved by the superintendent of insurance. Such surcharge shall be considered as part of premium for purposes prescribed by law including, but not limited to, computing premium tax, reporting to the superintendent of insurance pursuant to section ninety-nine of this chapter and section three hundred seven of the insurance law, determining the limitation of expenditures for the administration of the state insurance fund pursuant to section eighty-eight of this chapter and the cancellation by an insurance carrier, including the state insurance fund, of a policy for non-payment of premium. The provisions of this paragraph shall not apply with respect to policies containing coverage pursuant to subsection (j) of section three thousand four hundred twenty of the insurance law relating to every policy providing comprehensive personal liability insurance on a one, two, three or four family owner-occupied dwelling. The state insurance fund shall, notify its insureds that such assessments, shall be, for the purpose of recoupment, treated as separate costs, respectively for the purpose of premiums billed on or after October first, nineteen hundred ninety-four.

For the purposes of this paragraph, except as otherwise provided: the term "insurance carrier" shall include only stock corporations, mutual corporations and reciprocal insurers authorized to transact the business of workers' compensation insurance in this state; the term "self-insurer" shall include any employer or group of employers permitted to pay compensation directly under the provisions of subdivision three, three-a or four of section fifty of this chapter;

S 2. This act shall take effect January 1, 2010.