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

7133

I N S E N A T E

March 15, 2010

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

AN ACT to amend the workers' compensation law and the insurance law, in relation to consideration of an employer's loss experience in rate setting; and to amend the workers' compensation law, in relation to liability for compensation

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

Section 1. Subdivision 1 of section 89 of the workers' compensation law, as amended by chapter 135 of the laws of 1998, is amended to read as follows:

1. Employments and employees in the state fund shall be divided into such groups and classes as shall be equitable based upon differences of industry or hazard for the purpose of establishing premium rates for workers' compensation insurance, and for such purpose a system of merit rating [may] SHALL be employed which shall take account of the peculiar hazard of each individual risk AND AN EMPLOYER'S LOSS EXPERIENCE DURING THE MOST RECENT RATING PLAN PERIOD; PROVIDED, HOWEVER THAT SUCH LOSS EXPERIENCE SHALL NOT INCLUDE PAYMENT ON ANY CLAIMS WHERE THE INJURY WAS DETERMINED TO BE THE FAULT OF ANOTHER PARTY. Such premiums in the state fund shall be fixed at the lowest possible rates consistent with the maintenance of a solvent fund and of reasonable reserves and surplus.

S 2. Subsection (a) of section 2304 of the insurance law is amended to read as follows:

(a) In the making of rates, consideration shall be given to past and prospective loss experience, including the conflagration and catastrophe hazards, if any, both within and without this state, to all factors reasonably attributable to the class of risks, to a reasonable profit, to past and prospective expenses both country-wide and those specially applicable to this state, and in the case of participating insurers to policyholders' dividends, savings or unabsorbed premium deposits allowed or returned to policyholders, members or subscribers. IN THE MAKING OF RATES FOR WORKERS' COMPENSATION INSURANCE, IN ADDITION TO THE FOREGOING CONSIDERATION SHALL BE GIVEN TO EACH INDIVIDUAL EMPLOYER'S LOSS EXPERI-

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

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ENCE DURING THE MOST RECENT RATING PLAN; PROVIDED, HOWEVER THAT SUCH LOSS EXPERIENCE SHALL NOT INCLUDE CONSIDERATION OF PAYMENTS ON ANY CLAIMS WHERE THE INJURY WAS DETERMINED TO BE THE FAULT OF ANOTHER PARTY.

S 3. Subdivision 1 of section 10 of the workers' compensation law, as amended by chapter 924 of the laws of 1990, is amended to read as follows:

1. Every employer subject to this chapter shall in accordance with this chapter, except as otherwise provided in section twenty-five-a hereof, secure compensation to his employees and pay or provide compensation for their disability or death from injury arising out of and in the course of the employment without regard to fault as a cause of the injury, except that there shall be no liability for compensation under this chapter when the injury has been solely occasioned by intoxication from alcohol or a controlled substance of the injured employee while on duty; or by wilful intention of the injured employee to bring about the injury or death of himself or another; or where the injury was sustained in or caused by voluntary participation in an off-duty athletic activity not constituting part of the employee's work related duties unless the employer (a) requires the employee to participate in such activity, (b) compensates the employee for participating in such activity or (c) otherwise sponsors the activity; OR WHERE THE INJURY WAS SUSTAINED IN A MOTOR VEHICLE ACCIDENT WHICH WAS DETERMINED TO BE THE FAULT OF A PARTY OTHER THAN THE EMPLOYEE OR THE EMPLOYER, TO THE EXTENT THAT COMPENSATION CAN BE OBTAINED THROUGH THE LIABILITY COVERAGE OF SUCH PERSON.

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.