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

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2011-2012 Regular Sessions

I N A S S E M B L Y

March 25, 2011

Introduced by M. of A. KOLB, REILICH, BURLING, BARCLAY, HAWLEY -- Multi-Sponsored by -- M. of A. CALHOUN, COOK, CORWIN, CROUCH, DUPREY, GIGLIO, JORDAN, OAKS, SAYWARD -- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to permanent partial disability, establishing objective medical guidelines, a benefit evaluation commission and pharmaceutical fee schedule, and providing for penalties for workers' compensation fraud; and repealing certain provisions of such law relating thereto

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

Section 1. Section 13 of the workers' compensation law is amended by adding a new subdivision (j) to read as follows:

(J)(1) WHEN A CLAIMANT SUBMITS A CLAIM TO THE EMPLOYER OR ITS CARRIER FOR PAYMENT OF PRESCRIBED MEDICINE OR FOR REIMBURSEMENT OF THE COST OF PRESCRIBED MEDICINE WHICH THE EMPLOYER IS REQUIRED TO PROVIDE UNDER THIS SECTION, THE EMPLOYER OR CARRIER SHALL PAY THE AMOUNT PRESCRIBED BY THE FEE SCHEDULE ADOPTED UNDER SECTION THIRTEEN-O OF THIS ARTICLE, OR IF THE PRESCRIBED MEDICINE IS NOT INCLUDED ON THE CURRENT FEE SCHEDULE, THE USUAL AND CUSTOMARY CHARGES FOR SUCH PRESCRIBED MEDICINE, WITHIN FORTY-FIVE DAYS OF RECEIPT OF THE CLAIM, UNLESS THE LIABILITY OF THE EMPLOYER TO PAY FOR THE PRESCRIBED MEDICINE IS NOT REASONABLY CLEAR.

(2) WHERE THE LIABILITY OF THE EMPLOYER OR CARRIER FOR THE CLAIM FOR PAYMENT OF PRESCRIBED MEDICINE OR REIMBURSEMENT FOR PAYMENT OF PRESCRIBED MEDICINE IS NOT REASONABLY CLEAR, THE EMPLOYER OR CARRIER SHALL PAY ANY UNDISPUTED PORTION OF THE CLAIM IN ACCORDANCE WITH THIS SECTION AND NOTIFY THE CLAIMANT IN WRITING WITHIN FORTY-FIVE DAYS OF RECEIPT OF THE CLAIM:

(A) THAT THE CLAIM IS NOT BEING PAID AND EXPLAINING THE REASONS FOR NONPAYMENT; OR

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

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(B) TO REQUEST ALL ADDITIONAL INFORMATION REASONABLY NEEDED TO DETERMINE THE EMPLOYER'S OR CARRIER'S LIABILITY FOR THE CLAIM.

UPON RECEIPT OF THE INFORMATION REQUESTED IN SUBPARAGRAPH (B) OF THIS PARAGRAPH, THE EMPLOYER OR CARRIER SHALL COMPLY WITH PARAGRAPH ONE OF THIS SUBDIVISION.

(3) EACH CLAIM FOR PAYMENT OF PRESCRIBED MEDICINE OR REIMBURSEMENT FOR PAYMENT OF PRESCRIBED MEDICINE THAT IS PROCESSED IN VIOLATION OF THIS SECTION SHALL CONSTITUTE A SEPARATE VIOLATION. IN ADDITION TO THE OTHER PENALTIES PROVIDED IN THIS CHAPTER, ANY EMPLOYER OR CARRIER THAT FAILS TO REIMBURSE THE CLAIMANT AS REQUIRED IN THIS SECTION SHALL BE OBLIGATED TO PAY TO THE CLAIMANT THE AMOUNT PRESCRIBED ON THE FEE SCHEDULE ADOPTED UNDER SECTION THIRTEEN-O OF THIS ARTICLE, OR IF THE PRESCRIBED MEDICINE IS NOT INCLUDED ON THE CURRENT FEE SCHEDULE, THE USUAL AND CUSTOMARY CHARGES FOR THE PRESCRIBED MEDICINE PLUS SIMPLE INTEREST AT THE RATE SET FORTH IN SECTION FIVE THOUSAND FOUR OF THE CIVIL PRACTICE LAW AND RULES.

(4) NOTHING IN THIS SUBDIVISION SHALL PROHIBIT EMPLOYERS OR CARRIERS FROM AGREEING TO OR ARRANGING FOR DIRECT BILLING BY THE PHARMACY TO THE EMPLOYER OR CARRIER FOR THE COST OF PRESCRIBED MEDICINE, IN ORDER FOR CLAIMANTS TO MORE PROMPTLY RECEIVE PRESCRIBED MEDICINE FOR WHICH EMPLOYERS AND CARRIERS ARE LIABLE UNDER THIS SECTION.

S 2. Section 13-a of the workers' compensation law is amended by adding a new subdivision 5-a to read as follows:

(5-A) THE BOARD MAY, AT ITS DISCRETION, PRESCRIBE REGULATIONS TO PRE-AUTHORIZE CERTAIN SPECIALIST CONSULTATIONS, SURGICAL OPERATIONS, PHYSIOTHERAPEUTIC OR OCCUPATIONAL THERAPY PROCEDURES, X-RAY EXAMINATIONS OR SPECIAL DIAGNOSTIC LABORATORY TESTS FOR SPECIFIED TYPES OF INJURIES THAT COST OVER ONE THOUSAND DOLLARS.

S 3. Subdivision 3 of section 15 of the workers' compensation law is REPEALED and a new subdivision 3 is added to read as follows:

3. PERMANENT PARTIAL DISABILITY. A. IN CASE OF DISABILITY PARTIAL IN CHARACTER BUT PERMANENT IN QUALITY, THAT OCCURS ON OR AFTER THE ESTABLISHMENT OF OBJECTIVE MEDICAL GUIDELINES PURSUANT TO SECTION FIFTEEN-A OF THIS ARTICLE, THE COMPENSATION SHALL BE EXCLUSIVELY BASED ON AN IMPAIRMENT RATING ESTABLISHED PURSUANT TO SECTION FIFTEEN-A OF THIS ARTICLE.

B. COMPENSATION UNDER THIS SUBDIVISION SHALL BE PAID AT THE RATE OF SIXTY-SIX AND TWO-THIRDS PER CENTUM OF THE INJURED WORKER'S AVERAGE WEEKLY WAGES, NOT TO EXCEED THE MAXIMUM WEEKLY BENEFIT FOR PERMANENT OR TEMPORARY PARTIAL DISABILITY OR FOR PERMANENT OR TEMPORARY TOTAL DISABILITY.

C. A CLAIMANT'S ENTITLEMENT TO COMPENSATION UNDER THIS SUBDIVISION BEGINS THE DAY AFTER THE CLAIMANT REACHES MAXIMUM MEDICAL IMPROVEMENT AND CONTINUES UNTIL THE EARLIER OF: (1) THE EXPIRATION OF A PERIOD COMPUTED AT THE RATE OF THREE WEEKS FOR EACH PERCENTAGE POINT OF IMPAIRMENT; OR (2) THE DEATH OF THE CLAIMANT.

D. SUPPLEMENTAL BENEFITS SHALL BE PAYABLE TO AN INJURED WORKER WHO, AT THE EXPIRATION OF THE PERIOD IN SUBPARAGRAPH ONE OF PARAGRAPH C OF THIS SUBDIVISION, HAS APPLIED TO THE BOARD FOR RE-EVALUATION, HAS NOT RETURNED TO WORK OR HAS RETURNED TO WORK EARNING LESS THAN THIRTY PERCENT OF THE CLAIMANT'S AVERAGE WEEKLY WAGE AS A RESULT OF THE CLAIMANT'S IMPAIRMENT, AND WHO HAS IN GOOD FAITH ATTEMPTED TO OBTAIN EMPLOYMENT COMMENSURATE WITH THE CLAIMANT'S PHYSICAL ABILITY TO WORK. SUPPLEMENTAL BENEFITS SHALL BE PAYABLE FOR A PERIOD NOT TO EXCEED FIVE HUNDRED WEEKS INCLUDING ANY WEEKS OF TEMPORARY OR PERMANENT DISABILITY BENEFITS PAYABLE ON ACCOUNT OF SUCH IMPAIRMENT. SUPPLEMENTAL BENEFITS SHALL BE PAYABLE AT SIXTY-SIX AND TWO-THIRDS PERCENT OF THE DIFFERENCE BETWEEN

THE INJURED WORKER'S AVERAGE WEEKLY WAGES BEFORE AND AFTER INJURY, NOT TO EXCEED THE RATE PROVIDED IN PARAGRAPH B OF THIS SUBDIVISION.

E. IN THE EVENT THE CLAIM IS CONTROVERTED PURSUANT TO SECTION TWENTY-FIVE OF THIS ARTICLE AND THE CONTROVERSY IS RESOLVED IN FAVOR OF THE CLAIMANT, THE CLAIMANT SHALL RECEIVE UP TO NINETY DAYS OF ADDITIONAL BENEFITS BEYOND THE PERIOD PRESCRIBED IN PARAGRAPH D OF THIS SUBDIVISION AND NOT TO EXCEED THE PERIOD DURING WHICH SUCH CLAIM WAS CONTROVERTED.

S 4. Paragraph (a) of subdivision 6 of section 15 of the workers' compensation law, as amended by chapter 689 of the laws of 2007, is amended to read as follows:

(a) Compensation for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs, (1) on or after January first, nineteen hundred seventy-eight, shall not exceed one hundred twenty-five dollars per week, that occurs (2) on or after July first, nineteen hundred seventy-eight, shall not exceed one hundred eighty dollars per week, that occurs (3) on or after January first, nineteen hundred seventy-nine, shall not exceed two hundred fifteen dollars per week, that occurs (4) on or after July first, nineteen hundred eighty-three, shall not exceed two hundred fifty-five dollars per week, that occurs (5) on or after July first, nineteen hundred eighty-four, shall not exceed two hundred seventy-five dollars per week, that occurs (6) on or after July first, nineteen hundred eighty-five, shall not exceed three hundred dollars per week, that occurs (7) on or after July first, nineteen hundred ninety, shall not exceed three hundred forty dollars per week; and in the case of temporary total disability shall not be less than thirty dollars per week and in the case of permanent total disability shall not be less than twenty dollars per week except that if the employee's wages at the time of injury are less than thirty or twenty dollars per week respectively, he or she shall receive his or her full weekly wages. Compensation for permanent or temporary partial disability due to an accident or disablement resulting from an occupational disease that occurs (1) on or after January first, nineteen hundred seventy-eight, shall not exceed one hundred five dollars per week, that occurs (2) on or after July first, nineteen hundred eighty-three, shall not exceed one hundred twenty-five dollars per week, that occurs (3) on or after July first, nineteen hundred eighty-four, shall not exceed one hundred thirty-five dollars per week, that occurs (4) on or after July first, nineteen hundred eighty-five, shall not exceed one hundred fifty dollars per week, that occurs (5) on or after July first, nineteen hundred ninety, shall not exceed two hundred eighty dollars per week; nor be less than twenty dollars per week; except that if the employee's wages at the time of injury are less than twenty dollars per week, he or she shall receive his or her full weekly wages. In no event shall compensation when combined with decreased earnings or earning capacity exceed the amount of wages which the employee was receiving at the time the injury occurred. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs (1) on or after July first, nineteen hundred ninety-one and prior to July first, nineteen hundred ninety-two, shall not exceed three hundred fifty dollars per week; (2) on or after July first, nineteen hundred ninety-two AND PRIOR TO THE ESTABLISHING OF OBJECTIVE MEDICAL GUIDELINES FOR THE DETERMINATION OF PERCENTAGE OF PERMANENT IMPAIRMENT PURSUANT TO SECTION FIFTEEN-A OF THIS ARTICLE, shall not exceed four hundred dollars per week; nor be less than forty dollars per week except that if the

employee's wages at the time of injury are less than forty dollars per week, the employee shall receive his or her full wages. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs (1) on or after July first, two thousand seven shall not exceed five hundred dollars per week, (2) on or after July first, two thousand eight shall not exceed five hundred fifty dollars per week, (3) on or after July first, two thousand nine shall not exceed six hundred dollars per week, and (4) on or after July first, two thousand ten, and on or after July first of each succeeding year, shall not exceed two-thirds of the New York state average weekly wage for the year in which it is reported. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs on or after July first, two thousand seven shall not be less than one hundred dollars per week except that if the employee's wages at the time of injury are less than one hundred dollars per week, the employee shall receive his or her full wages. In no event shall compensation when combined with decreased earnings or earning capacity exceed the amount of wages the employee was receiving at the time the injury occurred. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease or injury that occurred as a result of World Trade Center rescue activity by an employee of a private voluntary hospital, who passed a physical examination upon employment as a rescue worker that failed to reveal evidence of a condition that was the proximate cause of disablement or occupational disease or injury, shall not exceed three-quarters of a claimant's wage on September eleventh, two thousand one. In no event shall compensation when combined with decreased earnings or earning capacity exceed the amount of wages the employee was receiving on September eleventh, two thousand one.

S 5. Subparagraph 4 of paragraph (h) of subdivision 8 of section 15 of the workers' compensation law, as amended by section 1 of part QQ of chapter 56 of the laws of 2009, 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] FIFTEEN 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 propor-

tion that 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 standard premium by each such insurance carrier bore to the total standard premium reported by all insurance carriers during the calendar year which ended within said preceding fiscal 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, "standard premium" shall mean the premium as defined for the purposes of this assessment by the superintendent of insurance, in consultation with the chair of the board and the workers' compensation rating board. 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 superintendent of insurance in consultation with the New York workers' compensation rating board and the chair of the board. 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.

The board is hereby authorized to issue credits or refunds as necessary, in the case of overpayments made to the fund. An insurance carrier that knowingly underreports premiums for the purposes of this section shall be guilty of a class E felony.

S 6. The workers' compensation law is amended by adding two new sections 15-a and 15-b to read as follows:

S 15-A. OBJECTIVE MEDICAL GUIDELINES. 1. THE CHAIR SHALL WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION APPOINT A COMMITTEE OF FIVE EXPERT MEDICAL CONSULTANTS TO DEVELOP OBJECTIVE MEDICAL GUIDELINES FOR THE DETERMINATION OF PERCENTAGE OF PERMANENT IMPAIRMENT. THE PERCENTAGE OF PERMANENT IMPAIRMENT SHALL BE KNOWN AS THE IMPAIRMENT RATING. THE COMMITTEE SHALL WITHIN ONE HUNDRED TWENTY DAYS OF SUCH COMMITTEE'S APPOINTMENT RECOMMEND OBJECTIVE MEDICAL GUIDELINES FOR THE DETERMINATION OF PERCENTAGE OF PERMANENT IMPAIRMENT TO THE CHAIR. THE CHAIR SHALL ADOPT OBJECTIVE MEDICAL GUIDELINES FOR THE DETERMINATION OF PERCENTAGE OF PERMANENT IMPAIRMENT BASED ON THE RECOMMENDATIONS OF THE COMMITTEE WITHIN THIRTY DAYS OF RECEIPT OF SUCH RECOMMENDATIONS.

2. ONCE OBJECTIVE MEDICAL GUIDELINES ARE ADOPTED, THE CHAIR SHALL BE GRANTED THE AUTHORITY, WHEN HE OR SHE SEES FIT, TO APPOINT A COMMITTEE

PURSUANT TO SUBDIVISION ONE OF THIS SECTION TO MAKE RECOMMENDATIONS TO AMEND THE OBJECTIVE MEDICAL GUIDELINES FOR THE DETERMINATION OF PERCENTAGE OF PERMANENT IMPAIRMENT.

S 15-B. BENEFIT EVALUATION COMMISSION. 1. A WORKERS' COMPENSATION BENEFIT EVALUATION COMMISSION SHALL BE APPOINTED BEFORE JANUARY FIRST, TWO THOUSAND FOURTEEN TO EXAMINE, EVALUATE AND REPORT ON THE SUFFICIENCY OF BENEFIT LEVELS IN REGARD TO INFLATION AND THE OVERALL COST OF WORKERS' COMPENSATION FOR EMPLOYERS.

2. THE COMMISSION CREATED BY THIS SECTION SHALL CONSIST OF FIVE MEMBERS AS FOLLOWS: (I) THE CHAIR OF THE WORKERS' COMPENSATION BOARD, OR HIS OR HER DESIGNEE, WHO SHALL ACT AS CHAIR OF SUCH COMMISSION; (II) ONE MEMBER APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE; (III) ONE MEMBER APPOINTED BY THE SPEAKER OF THE ASSEMBLY; (IV) ONE MEMBER APPOINTED BY THE MINORITY LEADER OF THE SENATE; AND (V) ONE MEMBER APPOINTED BY THE MINORITY LEADER OF THE ASSEMBLY.

3. SUCH COMMISSION MAY EMPLOY AND AT PLEASURE REMOVE SUCH PERSONNEL AS IT MAY DEEM NECESSARY FOR THE PERFORMANCE OF ITS FUNCTIONS AND FIX THEIR COMPENSATION WITHIN THE AMOUNTS MADE AVAILABLE THEREFOR.

4. THE COMMISSION MAY MEET WITHIN AND WITHOUT THE STATE, SHALL HOLD PUBLIC HEARINGS, AND SHALL HAVE ALL THE POWERS OF A LEGISLATIVE COMMITTEE PURSUANT TO THE LEGISLATIVE LAW.

5. THE MEMBERS OF THE COMMISSION SHALL RECEIVE NO COMPENSATION FOR THEIR SERVICES, BUT SHALL BE ALLOWED THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES PURSUANT TO THIS SECTION.

6. TO THE MAXIMUM EXTENT FEASIBLE, THE COMMISSION SHALL BE ENTITLED TO REQUEST AND RECEIVE, AND SHALL UTILIZE AND BE PROVIDED WITH SUCH FACILITIES, RESOURCES AND DATA OF ANY COURT, DEPARTMENT, DIVISION, BOARD, BUREAU, COMMISSION OR AGENCY OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF AS IT MAY REASONABLY REQUEST TO PROPERLY CARRY OUT ITS POWERS AND DUTIES PURSUANT TO THIS SECTION.

7. THE COMMISSION SHALL MAKE A REPORT TO THE GOVERNOR, TEMPORARY PRESIDENT OF THE SENATE, SPEAKER OF THE ASSEMBLY, MINORITY LEADER OF THE SENATE AND MINORITY LEADER OF THE ASSEMBLY OF ITS FINDINGS, CONCLUSIONS AND RECOMMENDATIONS ON OR BEFORE OCTOBER FIRST, TWO THOUSAND FIFTEEN ON WHETHER COST SAVINGS MEASURES ESTABLISHED BY THE COMMISSION PURSUANT TO THIS SECTION WOULD ALLOW THE MAXIMUM BENEFIT RATE TO INCREASE TO TWO-THIRDS THE STATE'S AVERAGE WEEKLY WAGE ON JANUARY FIRST, TWO THOUSAND SIXTEEN, WITHOUT INCREASING COSTS TO EMPLOYERS. SUCH REPORT SHALL BE MADE AVAILABLE TO THE PUBLIC AND INCLUDE SUCH LEGISLATIVE PROPOSALS AS SHALL BE NECESSARY TO IMPLEMENT THE COMMISSION'S RECOMMENDATIONS.

S 7. Paragraph (f) of subdivision 1 of section 25 of the workers' compensation law, as amended by chapter 635 of the laws of 1996, is amended to read as follows:

(f) Whenever compensation is withheld solely because a controversy exists on the question of liability as between insurance carriers, surety companies, the special disability fund, the special fund for reopened cases, or an employer, the board [may] SHALL WITHIN NINETY DAYS direct that any carrier, surety company, the special disability fund, the special fund for reopened cases shall immediately pay compensation and bills for medical care to the extent payable in accordance with sections thirteen-g, thirteen-k, thirteen-l and thirteen-m of this chapter, pending determination of such issue. Any such payment or payments shall not be deemed an admission against interest by the carrier, surety company, special disability fund or the special fund for reopened cases. After final determination, the parties shall make the necessary and proper reimbursement including the payment of simple interest at the rate

established by section five thousand four of the civil practice law and rules in conformity with such determination.

S 8. The third undesignated paragraph of subdivision 3 of section 25-a of the workers' compensation law, as amended by chapter 6 of the laws of 2007, is amended to read as follows:

Such assessment and the payments made into said fund shall not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance as provided in the insurance law but shall for the purpose of recoupment be treated as separate costs by carriers. Carriers shall assess such costs on their policyholders in accordance with rules set forth by the New York workers' compensation rating board, as approved by the superintendent of insurance. THE SUPERINTENDENT OF INSURANCE SHALL PROMULGATE RULES AND REGULATIONS REGARDING HOW THE NEW YORK COMPENSATION INSURANCE RATING BOARD COLLECTS AND RELEASES, FOR PUBLIC INFORMATION, DATA ON PREMIUMS AND LOSSES.

S 9. Section 50 of the workers' compensation law is amended by adding a new subdivision 3-f to read as follows:

3-F. THE STATE INSURANCE FUND AND ANY OTHER INSURER THAT ISSUES POLICIES OF WORKERS' COMPENSATION INSURANCE MAY REQUIRE NOMINAL CO-PAYMENTS TO BE PAID BY THE EMPLOYEE OF UP TO FIVE DOLLARS FOR PHARMACEUTICALS PRESCRIBED UNDER A WORKERS' COMPENSATION POLICY. IN ADDITION, PREMIUM REDUCTIONS, IN ACCORDANCE WITH METHODOLOGY APPROVED BY THE SUPERINTENDENT OF INSURANCE SHALL BE APPLIED TO ANY POLICY WRITTEN WHICH REQUIRES SUCH PHARMACEUTICAL CO-PAYMENTS. SUCH PREMIUM REDUCTIONS SHALL BE DETERMINED BEFORE THE APPLICATION OF ANY EXPERIENCE MODIFICATION PREMIUM SURCHARGE OR PREMIUM DISCOUNT.

S 10. Subdivisions 1, 2 and 3 of section 114 of the workers' compensation law, as added by chapter 635 of the laws of 1996, are amended to read as follows:

1. Any person who, knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer or purported insurer, or any agent thereof, any written statement as part of, or in support of, an application for the issuance of or the rating of an insurance policy for compensation insurance, or a claim for payment or other benefit pursuant to a compensation policy which he or she knows to: (i) contain a false statement or representation concerning any fact material thereto; or (ii) omits any fact material thereto, shall be guilty of WORKERS' COMPENSATION FRAUD IN THE FOURTH DEGREE WHEN HE OR SHE COMMITS A FRAUDULENT WORKERS' COMPENSATION ACT AND THEREBY TAKES OR OBTAINS BENEFITS, AND WHEN THE VALUE OF THE WORKERS' COMPENSATION BENEFITS EXCEEDS ONE THOUSAND DOLLARS. WORKERS' COMPENSATION FRAUD IN THE FOURTH DEGREE IS a class E felony.

A PERSON IS GUILTY OF WORKERS' COMPENSATION FRAUD IN THE THIRD DEGREE WHEN HE OR SHE COMMITS A FRAUDULENT WORKERS' COMPENSATION ACT AND THEREBY TAKES OR OBTAINS BENEFITS, AND WHEN THE VALUE OF THE WORKERS' COMPENSATION BENEFITS EXCEEDS THREE THOUSAND DOLLARS. WORKERS' COMPENSATION FRAUD IN THE THIRD DEGREE IS A CLASS D FELONY.

A PERSON IS GUILTY OF WORKERS' COMPENSATION FRAUD IN THE SECOND DEGREE WHEN HE OR SHE COMMITS A FRAUDULENT WORKERS' COMPENSATION ACT AND THEREBY TAKES OR OBTAINS BENEFITS, AND WHEN THE VALUE OF THE WORKERS' COMPENSATION BENEFITS EXCEEDS FIFTY THOUSAND DOLLARS. WORKERS' COMPENSATION FRAUD IN THE SECOND DEGREE IS A CLASS C FELONY.

A PERSON IS GUILTY OF WORKERS' COMPENSATION FRAUD IN THE FIRST DEGREE WHEN HE OR SHE COMMITS A FRAUDULENT WORKERS' COMPENSATION ACT AND THEREBY TAKES OR OBTAINS BENEFITS, AND WHEN THE VALUE OF THE WORKERS' COMPEN-

SATION BENEFITS EXCEEDS ONE MILLION DOLLARS. WORKERS' COMPENSATION FRAUD IN THE FIRST DEGREE IS A CLASS B FELONY.

Upon conviction, the court in addition to any other authorized sentence, may order forfeiture of all rights to compensation or payments of any benefit, and may also require restitution of any amount received as a result of a violation of this subdivision.

2. An employer or carrier, or any employee, agent, or person acting on behalf of an employer or carrier, who knowingly makes a false statement or representation as to a material fact in the course of reporting, investigation of, or adjusting a claim for any benefit or payment under this chapter for the purpose of avoiding provision of such payment or benefit shall be guilty of WORKERS' COMPENSATION FRAUD IN THE FOURTH DEGREE WHEN HE OR SHE COMMITS A FRAUDULENT WORKERS' COMPENSATION ACT AND THEREBY TAKES OR OBTAINS BENEFITS, AND WHEN THE VALUE OF THE WORKERS' COMPENSATION BENEFITS EXCEEDS ONE THOUSAND DOLLARS. WORKERS' COMPENSATION FRAUD IN THE FOURTH DEGREE IS a class E felony.

A PERSON IS GUILTY OF WORKERS' COMPENSATION FRAUD IN THE THIRD DEGREE WHEN HE OR SHE COMMITS A FRAUDULENT WORKERS' COMPENSATION ACT AND THEREBY TAKES OR OBTAINS BENEFITS, AND WHEN THE VALUE OF THE WORKERS' COMPENSATION BENEFITS EXCEEDS THREE THOUSAND DOLLARS. WORKERS' COMPENSATION FRAUD IN THE THIRD DEGREE IS A CLASS D FELONY.

A PERSON IS GUILTY OF WORKERS' COMPENSATION FRAUD IN THE SECOND DEGREE WHEN HE OR SHE COMMITS A FRAUDULENT WORKERS' COMPENSATION ACT AND THEREBY TAKES OR OBTAINS BENEFITS, AND WHEN THE VALUE OF THE WORKERS' COMPENSATION BENEFITS EXCEEDS FIFTY THOUSAND DOLLARS. WORKERS' COMPENSATION FRAUD IN THE SECOND DEGREE IS A CLASS C FELONY.

A PERSON IS GUILTY OF WORKERS' COMPENSATION FRAUD IN THE FIRST DEGREE WHEN HE OR SHE COMMITS A FRAUDULENT WORKERS' COMPENSATION ACT AND THEREBY TAKES OR OBTAINS BENEFITS, AND WHEN THE VALUE OF THE WORKERS' COMPENSATION BENEFITS EXCEEDS ONE MILLION DOLLARS. WORKERS' COMPENSATION FRAUD IN THE FIRST DEGREE IS A CLASS B FELONY.

3. A person who knowingly makes a false statement or representation as to a material fact for the purpose of obtaining, maintaining or renewing insurance under this chapter, whether for himself or herself or for any other person or entity or for the purpose of evading the requirements of section fifty of this chapter shall be guilty of WORKERS' COMPENSATION FRAUD IN THE FOURTH DEGREE WHEN HE OR SHE COMMITS A FRAUDULENT WORKERS' COMPENSATION ACT AND THEREBY TAKES OR OBTAINS BENEFITS, AND WHEN THE VALUE OF THE WORKERS' COMPENSATION BENEFITS EXCEEDS ONE THOUSAND DOLLARS. WORKERS' COMPENSATION FRAUD IN THE FOURTH DEGREE IS a class E felony.

A PERSON IS GUILTY OF WORKERS' COMPENSATION FRAUD IN THE THIRD DEGREE WHEN HE OR SHE COMMITS A FRAUDULENT WORKERS' COMPENSATION ACT AND THEREBY TAKES OR OBTAINS BENEFITS, AND WHEN THE VALUE OF THE WORKERS' COMPENSATION BENEFITS EXCEEDS THREE THOUSAND DOLLARS. WORKERS' COMPENSATION FRAUD IN THE THIRD DEGREE IS A CLASS D FELONY.

A PERSON IS GUILTY OF WORKERS' COMPENSATION FRAUD IN THE SECOND DEGREE WHEN HE OR SHE COMMITS A FRAUDULENT WORKERS' COMPENSATION ACT AND THEREBY TAKES OR OBTAINS BENEFITS, AND WHEN THE VALUE OF THE WORKERS' COMPENSATION BENEFITS EXCEEDS FIFTY THOUSAND DOLLARS. WORKERS' COMPENSATION FRAUD IN THE SECOND DEGREE IS A CLASS C FELONY.

A PERSON IS GUILTY OF WORKERS' COMPENSATION FRAUD IN THE FIRST DEGREE WHEN HE OR SHE COMMITS A FRAUDULENT WORKERS' COMPENSATION ACT AND THEREBY TAKES OR OBTAINS BENEFITS, AND WHEN THE VALUE OF THE WORKERS' COMPENSATION BENEFITS EXCEEDS ONE MILLION DOLLARS. WORKERS' COMPENSATION FRAUD IN THE FIRST DEGREE IS A CLASS B FELONY.

In addition to any other remedy, the carrier providing insurance shall be entitled to restitution of any amount obtained or withheld as a result of a violation of this subdivision.

S 11. The workers' compensation law is amended by adding a new section 114-d to read as follows:

S 114-D. WORKERS' COMPENSATION LAW HOTLINE. THE CHAIRMAN SHALL ESTABLISH A TOLL-FREE TELEPHONE HOTLINE TO ANSWER QUESTIONS AND PROVIDE GUIDANCE TO BUSINESSES AND INDIVIDUALS ABOUT THE STATE'S WORKERS' COMPENSATION LAW AND FRAUD. SUCH TOLL-FREE HOTLINE SHALL BE STAFFED BY PERSONS TRAINED IN THE LAWS, RULES, AND REGULATIONS APPLICABLE TO THE WORKERS' COMPENSATION LAW.

S 12. Subdivision 3 of section 136 of the workers' compensation law is amended by adding a new paragraph (b-1) to read as follows:

(B-1) TO PROSECUTE VIOLATIONS OF LAWS, RULES AND REGULATIONS PERTAINING TO THE WORKERS' COMPENSATION SYSTEM INCLUDING WORKERS' COMPENSATION FRAUD;

S 13. This act shall take effect immediately; provided, however, that the provisions of section ten of this act shall take effect on the thirtieth day after it shall have become a law.