

8509

2011-2012 Regular Sessions

I N A S S E M B L Y

June 21, 2011

Introduced by M. of A. WRIGHT, ABBATE -- read once and referred to the
Committee on Labor

AN ACT to amend the workers' compensation law, in relation to group
self-insurance

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

1 Section 1. Section 15-a of the workers' compensation law, as added by
2 section 2 of part G of chapter 57 of the laws of 2011, is amended to
3 read as follows:
4 S 15-a. Assessment on insolvent group self-insured trusts. The legis-
5 lature finds that in lieu of the assessments under sections fifteen and
6 one hundred fifty-one of this chapter that shall no longer be imposed on
7 closed group self-insured trusts as a result of [the] PART G OF chapter
8 FIFTY-SEVEN of the laws of two thousand eleven [which added this
9 section], the members of group self-insured trusts that were insolvent
10 upon closing, and that fail to pay their obligations within the periods
11 specified by this section, shall be subject to a one time assessment
12 pursuant to this section. Within thirty days of January first, two thou-
13 sand sixteen, all employers who were members of a closed group self-in-
14 sured trust that was insolvent at the time the group was closed shall be
15 subject to an assessment under this section, except for those employers
16 that: (1) have entered into a settlement agreement or payment plan with
17 the board under which they have agreed to resolve all liabilities from
18 the membership in such trust, and remain current in their payments; (2)
19 are members of a group self-insurer that has transferred all of its
20 liabilities transferred via a loss portfolio transfer; or (3) have paid
21 all moneys billed them by the board at the time such assessment is due.
22 For purposes of this section, insolvent means the inability of a private
23 group self-insured trust to pay its outstanding lawful obligations under
24 this chapter as they mature in the regular course of business, as may be
25 shown by: (i) the self-insurer being underfunded as defined in subdivi-

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

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1 sion three-a of section fifty of this chapter; and (ii) the sum of the
2 group self-insured trust's assets, as defined by regulation of the
3 chair, plus the available security deposit held by the chair pursuant to
4 subdivision three-a of section fifty of this chapter and regulation of
5 the chair, being less than the total cost of all of the group self-in-
6 sured trust's anticipated workers' compensation liabilities, as defined
7 by board regulations, that will accrue within the succeeding six months.
8 The total of such assessment shall be determined by the percentage of
9 the assessment levied on all employers under subdivision eight of
10 section fifteen of this article in two thousand ten that was levied on
11 group self-insured trusts multiplied by the total amount of the employ-
12 er's unpaid pro rata share of any deficit owed by the closed group self-
13 insured employer of which such employer was a member, as determined by
14 the chair. The amount received on such assessment shall be used as an
15 offset against the assessments imposed on other employers under subdivi-
16 sion eight of section fifteen of this article and section one hundred
17 fifty-one of this chapter in the calendar year following the year in
18 which it was received. IN NO EVENT SHALL THE ONE TIME ASSESSMENT REFER-
19 ENCED IN THIS SECTION REFLECT AN INCREASE IN THE PRO RATA SHARE OF TOTAL
20 LIABILITY FOR ANY ASSESSMENT ON ANY GROUP, WHETHER SOLVENT OR INSOLVENT,
21 THAT MAY INCREASE AS A RESULT OF THE CLOSING OF ANY OTHER GROUP.

22 S 2. Subparagraph (a) of paragraph 2 of subdivision 3-a of section 50
23 of the workers' compensation law, as amended by section 4 of part G of
24 chapter 57 of the laws of 2011, is amended to read as follows:

25 (a) Any group consisting exclusively of such employers may adopt a
26 plan for self-insurance, as a group, for the payment of compensation
27 under this chapter to their employees, except that no new groups may
28 adopt such a plan, and no group not composed solely of public entities
29 set forth in paragraph a of subdivision four of this section may insure
30 any liabilities for any employers on and after January first, two thou-
31 sand twelve, except THOSE GROUPS WHICH ELECT TO CONTINUE TO PROVIDE
32 COVERAGE as provided for in paragraph ten of this subdivision MAY ELECT
33 TO DISCONTINUE TO OFFER SUCH COVERAGE BEFORE JANUARY FIRST, TWO THOUSAND
34 THIRTEEN. Under such plan the group shall assume the liability of all
35 the employers within the group and pay all compensation for which the
36 said employers are liable under this chapter, except that in the case of
37 municipal corporations as herein defined no proof of financial ability
38 or deposit of securities or cash need be made in compliance with this
39 subdivision. The group qualifying under this subdivision shall be known
40 as a group self-insurer and the employers participating therein and
41 covered thereby shall be known as members.

42 S 3. Clause 2 of subparagraph (a) of paragraph 10 of subdivision 3-a
43 of section 50 of the workers' compensation law, as added by section 4 of
44 part G of chapter 57 of the laws of 2011, is amended and a new paragraph
45 13 is added to read as follows:

46 (2) The members of the group, through the administrator, (a) jointly
47 deposit sufficient securities in accordance with subdivision three of
48 this section as to secure the liability of the members of the group to
49 pay for all existing claims obligations, provided such deposit shall be
50 made by November first, two thousand [eleven] TWELVE, (b) jointly depos-
51 it sufficient securities in accordance with subdivision three of this
52 section as to secure all anticipated present and future claims of the
53 members of the group, by November first, two thousand [fourteen]
54 FIFTEEN, provided annual deposits are made in accordance with a schedule
55 set by the chair on or before November first of each year, and provided
56 that the deposit shall be deemed an asset of the group for the purpose

1 of determining its funding status, and (c) by November first, two thou-
2 sand [eleven] TWELVE and thereafter, shall maintain funds sufficient for
3 all other liabilities besides claims, including reserves for all assess-
4 ment liabilities, in a trust governed in accordance with Part 126 of
5 title 11 of the New York code of rules and regulations, of which the
6 board shall be the sole beneficiary, and the terms of the trust agree-
7 ment, and the trustee, shall be approved by the chair in his or her sole
8 discretion, and provided that any group self-insurer that does not hold
9 such funds in a trust that meets the terms of this paragraph shall post
10 them with the board;

11 (13) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION,
12 THE TWO THOUSAND ELEVEN ASSESSMENTS COLLECTED FROM A GROUP OF EMPLOYERS
13 AUTHORIZED TO SELF-INSURE PURSUANT TO PARAGRAPH TEN OF THIS SUBDIVISION
14 SHALL NOT EXCEED THE AMOUNTS POSTED BY ANY SUCH GROUP SELF-INSURED TRUST
15 IN THE PERIOD IMMEDIATELY PRIOR TO THE EFFECTIVE DATE OF CHAPTER FIFTY-
16 SEVEN OF THE LAWS OF TWO THOUSAND ELEVEN.

17 S 4. Severability. If any clause, sentence, paragraph, section or part
18 of this act shall be adjudged by any court of competent jurisdiction to
19 be invalid and after exhaustion of all further judicial review, the
20 judgement shall not affect, impair or invalidate the remainder thereof,
21 but shall be confined in its operation to the clause, sentence, para-
22 graph, section or part of this act directly involved in the controversy
23 in which the judgement shall have been rendered.

24 S 5. This act shall effect immediately, except that section one of
25 this act shall be deemed to have been in full force and effect on and
26 after June 1, 2011.