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

9405

I N A S S E M B L Y

February 28, 2012

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

AN ACT to amend the workers' compensation law, in relation to reducing the number of commissioners for the state insurance fund; in relation to requiring the superintendent of financial services to approve the rules adopted by the state insurance fund for the conduct of its business; in relation to changing notice requirements for policyholders withdrawing from the state insurance fund; and to amend the insurance law, in relation to removing the exemption of the state insurance fund from licensing and other requirements

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

Section 1. Section 77 of the workers' compensation law, as amended by chapter 6 of the laws of 2007, is amended to read as follows:

S 77. Administration. [The] 1. UNTIL JANUARY FIRST, TWO THOUSAND THIRTEEN, THE state insurance fund shall be administered by the commissioners of the state insurance fund, of whom there shall be ten. The commissioner of labor shall, in addition, be a commissioner of such fund by virtue of his or her office. The commissioners shall elect annually from the appointive members a chair and a vice-chair who shall act as chair in the absence of the chair. The commissioner of labor may designate a deputy commissioner to act in his or her place and stead as a commissioner of such fund. The commissioners shall be appointed by the governor, by and with the advice and consent of the senate. One commissioner shall be appointed by the governor upon recommendation by the New York State American Federation of Labor-Congress of Industrial Organizations, and one commissioner shall be appointed by the governor upon recommendation of the Business Council of the State of New York. They shall be policyholders insured in the state insurance fund. The commissioners shall be appointed for terms of three years each. They shall serve until their successors are appointed and have qualified. Vacancies shall be filled for the unexpired terms. Each commissioner shall before entering upon his or her duties, take and subscribe the constitutional oath of office which shall be filed in the office of the secretary of state.

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

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2. EFFECTIVE JANUARY FIRST, TWO THOUSAND THIRTEEN, THE STATE INSURANCE FUND SHALL BE ADMINISTERED BY THE COMMISSIONERS OF THE STATE INSURANCE FUND, OF WHOM THERE SHALL BE SEVEN. THE COMMISSIONER OF LABOR SHALL, IN ADDITION, BE A COMMISSIONER OF SUCH FUND BY VIRTUE OF HIS OR HER OFFICE. THE COMMISSIONERS SHALL ELECT ANNUALLY FROM THE APPOINTIVE MEMBERS A CHAIR AND A VICE-CHAIR WHO SHALL ACT AS CHAIR IN THE ABSENCE OF THE CHAIR. THE COMMISSIONER OF LABOR MAY DESIGNATE A DEPUTY COMMISSIONER TO ACT IN HIS OR HER PLACE AND STEAD AS A COMMISSIONER OF SUCH FUND. THE COMMISSIONERS SHALL BE APPOINTED BY THE GOVERNOR, BY AND WITH THE ADVICE AND CONSENT OF THE SENATE. ONE COMMISSIONER SHALL BE APPOINTED BY THE GOVERNOR UPON RECOMMENDATION BY THE NEW YORK STATE AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZATIONS, ONE COMMISSIONER SHALL BE APPOINTED BY THE GOVERNOR UPON RECOMMENDATION OF THE BUSINESS COUNCIL OF THE STATE OF NEW YORK, ONE COMMISSIONER SHALL BE APPOINTED BY THE GOVERNOR UPON RECOMMENDATION OF THE INDEPENDENT INSURANCE AGENTS AND BROKERS OF NEW YORK, ONE COMMISSIONER SHALL BE APPOINTED BY THE GOVERNOR UPON RECOMMENDATION OF THE PROFESSIONAL INSURANCE AGENTS ASSOCIATION OF NEW YORK STATE, AND ONE COMMISSIONER SHALL BE APPOINTED BY THE GOVERNOR UPON RECOMMENDATION OF THE NEW YORK CHAPTER OF THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS. TO THE EXTENT PRACTICABLE, THEY SHALL BE POLICYHOLDERS INSURED IN THE STATE INSURANCE FUND. THE COMMISSIONERS SHALL BE APPOINTED FOR TERMS OF THREE YEARS EACH. THEY SHALL SERVE UNTIL THEIR SUCCESSORS ARE APPOINTED AND HAVE QUALIFIED. VACANCIES SHALL BE FILLED FOR THE UNEXPIRED TERMS. EACH COMMISSIONER SHALL BEFORE ENTERING UPON HIS OR HER DUTIES, TAKE AND SUBSCRIBE THE CONSTITUTIONAL OATH OF OFFICE WHICH SHALL BE FILED IN THE OFFICE OF THE SECRETARY OF STATE.

S 2. The first undesignated paragraph of section 83 of the workers' compensation law, as amended by chapter 34 of the laws of 2010, is amended to read as follows:

The [commissioner] COMMISSIONERS shall adopt rules for the conduct of the business of the state fund, and may from time to time alter, amend or repeal any rule therefore adopted. At least [six] FOUR affirmative votes shall be required for the adoption of any rule, or the amendment or repeal of any rule. No rule, and no resolution proposing to alter, amend or repeal any rule, shall be effective unless approved by the [commissioner of labor. If the commissioner of labor fails to act upon any such rule or resolution within thirty days after it is communicated to him or her, such rule or resolution shall be deemed to have been approved] SUPERINTENDENT OF FINANCIAL SERVICES.

S 3. Subdivision a of section 94 of the workers' compensation law, as amended by chapter 635 of the laws of 1996, is amended to read as follows:

a. Any employer may, upon complying with subdivision two or three of section fifty of this chapter, withdraw from the fund by turning in his insurance contract for cancellation, [provided he has given written notice to the fund of his intention to withdraw not less than thirty days before the effective date of such cancellation] ALONG WITH WRITTEN NOTICE OF THE EFFECTIVE DATE OF THE CANCELLATION. Upon receipt of such notice the fund shall[, at least ten days prior to the effective date] file in the office of the chairman a notice of such cancellation date.

[In no event shall the insurance contract be deemed cancelled until at least ten days after the date of such filing, any earlier date mentioned in the notice to the contrary notwithstanding.]

If an employer withdraws from the fund upon complying with subdivision two of section fifty of this chapter, the new insurance contract with the stock corporation, mutual corporation or reciprocal insurer shall be

deemed not to take effect until the cancellation of such employer's contract with the state insurance fund has become effective.

S 4. Section 1108 of the insurance law, subsection (c) as amended by chapter 838 of the laws of 1985 and subsection (j) as added by section 2 of part R of chapter 56 of the laws of 2010, is amended to read as follows:

S 1108. Insurers exempt from licensing and other requirements. The following insurers, their officers, agents, representatives and employees shall be exempt from licensing and other requirements imposed by the provisions of this chapter (except article seventy-four hereof) to the extent specified below:

(a) Any charitable annuity society which complies with the requirements of section one thousand one hundred ten of this article, to the extent therein stated.

(b) Any fraternal benefit society, membership corporation or other organization exempted under the provisions of article forty-five of this chapter, to the extent therein stated.

[(c) The state insurance fund of this state, except as to the provisions of subsection (d) of section two thousand three hundred thirty-nine, section three thousand one hundred ten, subsection (a), paragraph one of subsection (b), paragraph three of subsection (c) and subsection (d) of section three thousand two hundred one, sections three thousand two hundred two, three thousand two hundred four, subsections (a) through (d) of section three thousand two hundred twenty-one, subsections (b) and (c) of section four thousand two hundred twenty-four, section four thousand two hundred twenty-six and subsections (a) and (b) and (g) through (j) of section four thousand two hundred thirty-five of this chapter and except as otherwise specifically provided by the laws of this state.

(d)] (C) Any corporate trustee or board of trustees acting pursuant to the banking law in relation to the fund for insurance of deposits in savings banks or the fund for insurance of shares of savings and loan associations.

[(e)] (D) Any corporation, organized under the laws of any state, solely to provide gratuitously for support or relief of the priests, clergy or ministers of any religious denomination, or their dependents, is exempt from all provisions of this chapter, except that any such corporation, created by special act of incorporation of this state, which by the provisions of such act is subject to the requirement of examination by, and making annual reports to, the superintendent, shall be subject to the provisions of article three of this chapter relating to examinations and statements or reports by insurers.

[(f)] (E) Any retirement system or pension fund that was doing business on January first, nineteen hundred forty under the education law, the civil service law, the mental hygiene law, any special act of incorporation of this state, or any municipal charter adopted under the laws of this state, exclusively for the benefit of the members of such system or fund or for all or any classes of the employees of this state or any municipality thereof, shall be exempt from the provisions of this chapter, except that if the law under which such system or fund was organized subjects it to examination by, and the making of annual reports to, the superintendent, such system or fund shall be subject to the provisions of article three of this chapter relating to examinations and statements or reports by insurers.

[(g)] (F) Any membership corporation or voluntary association organized and operating in this state prior to January first, nineteen

hundred thirty-nine and its members may act as indemnitors of a licensed property/casualty insurance company in respect to surety bonds or policies of insurance required to be filed by such members pursuant to section three hundred seventy of the vehicle and traffic law and are exempted from the requirement of having an insurer's license; but no such membership corporation or association shall become a surety on any such bond or otherwise do an insurance business.

[(h)] (G) Any relief department or pension plan of any common carrier subject to the [the] Railroad Retirement Act of 1974 (45 U.S.C. S 31), whose privileges and membership are confined to employees or former employees of such carrier or its affiliated or subsidiary companies, or to any association of such common carriers which administers any such department or plan.

[(i)] (H) Every blood credit system established by a city, pursuant to section twenty-one-d of the general city law.

[(j)] (I) Any group of employers authorized by the workers' compensation board to provide workers' compensation benefits for the employees of all member employers pursuant to subdivision three-a of section fifty of the workers' compensation law.

S 5. Paragraph 2 of subsection (a) of section 4522 of the insurance law is amended to read as follows:

(2) Organizations which limit their membership to the employees of a particular city or town, or of a designated business corporation or firm, or of one or more business corporations or firms having business interests in common, except as otherwise provided in subsection [(f)] (E) of section one thousand one hundred eight of this chapter. Any such organization which limits its membership to the employees of a corporation having more than five thousand employees may provide for hospital, surgical and medical benefits for the employee, his or her spouse, and his or her child or children not over eighteen years of age.

S 6. This act shall take effect on the sixtieth day after it shall have become a law.