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

5815

2011-2012 Regular Sessions

I N S E N A T E

June 17, 2011

Introduced by COMMITTEE ON RULES -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 15-a of the workers' compensation law, as added by section 2 of part G of chapter 57 of the laws of 2011, is amended to read as follows:

S 15-a. Assessment on insolvent group self-insured trusts. The legislature finds that in lieu of the assessments under sections fifteen and one hundred fifty-one of this chapter that shall no longer be imposed on closed group self-insured trusts as a result of [the] PART G OF chapter FIFTY-SEVEN of the laws of two thousand eleven [which added this section], the members of group self-insured trusts that were insolvent upon closing, and that fail to pay their obligations within the periods specified by this section, shall be subject to a one time assessment pursuant to this section. Within thirty days of January first, two thousand sixteen, all employers who were members of a closed group self-insured trust that was insolvent at the time the group was closed shall be subject to an assessment under this section, except for those employers that: (1) have entered into a settlement agreement or payment plan with the board under which they have agreed to resolve all liabilities from the membership in such trust, and remain current in their payments; (2) are members of a group self-insurer that has transferred all of its liabilities transferred via a loss portfolio transfer; or (3) have paid all moneys billed them by the board at the time such assessment is due. For purposes of this section, insolvent means the inability of a private group self-insured trust to pay its outstanding lawful obligations under this chapter as they mature in the regular course of business, as may be 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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sion three-a of section fifty of this chapter; and (ii) the sum of the group self-insured trust's assets, as defined by regulation of the chair, plus the available security deposit held by the chair pursuant to subdivision three-a of section fifty of this chapter and regulation of the chair, being less than the total cost of all of the group self-insured trust's anticipated workers' compensation liabilities, as defined by board regulations, that will accrue within the succeeding six months. The total of such assessment shall be determined by the percentage of the assessment levied on all employers under subdivision eight of section fifteen of this article in two thousand ten that was levied on group self-insured trusts multiplied by the total amount of the employer's unpaid pro rata share of any deficit owed by the closed group self-insured employer of which such employer was a member, as determined by the chair. The amount received on such assessment shall be used as an offset against the assessments imposed on other employers under subdivision eight of section fifteen of this article and section one hundred fifty-one of this chapter in the calendar year following the year in which it was received. IN NO EVENT SHALL THE ONE TIME ASSESSMENT REFERENCED IN THIS SECTION REFLECT AN INCREASE IN THE PRO RATA SHARE OF TOTAL LIABILITY FOR ANY ASSESSMENT ON ANY GROUP, WHETHER SOLVENT OR INSOLVENT, THAT MAY INCREASE AS A RESULT OF THE CLOSING OF ANY OTHER GROUP.

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

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

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

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

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

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

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

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