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 21, 2011

Introduced by M. of A. KOLB, REILICH, CALHOUN, OAKS, FINCH, CORWIN -- Multi-Sponsored by -- M. of A. BARCLAY, BURLING, BUTLER, CROUCH, DUPREY, HAWLEY, JORDAN, J. MILLER, MOLINARO, RAIA, SAYWARD, TEDISCO, THIELE -- 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; to amend the labor law, in relation to the use of scaffolding and other devices for use by employees; to amend the civil practice law and rules, in relation to making technical corrections thereto; to repeal section 241-a of the labor law, subdivision 8 of section 1602 of the civil practice law and rules and repealing certain provisions of the workers' compensation law relating thereto

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

Section 1. This act shall be known and may be cited as the "workplace safety act of 2011".

S 2. Subdivision 3 of section 15 of the workers' compensation law is REPEALED and a new subdivision 3 is added to read as follows: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.

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

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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 HAS AN IMPAIRMENT RATING OF FIFTEEN PERCENT OR MORE AS DETERMINED UNDER THIS SECTION AND WHO, AT THE EXPIRATION OF THE PERIOD IN SUBPARAGRAPH ONE OF PARAGRAPH C OF THIS SUBDIVISION, HAS NOT RETURNED TO WORK OR HAS RETURNED TO WORK EARNING LESS THAN EIGHTY 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 3. 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 4. 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 SIXTEEN 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 JANUARY FIRST, TWO THOUSAND SEVENTEEN AND ANNUALLY THEREAFTER. 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 5. 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, pend-

ing 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 6. 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 7. 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

(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 8. 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.

S 9. 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] TWENTY-FIVE 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 proportion 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 stand-

ard 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 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' COMPENSATION 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. Section 240 of the labor law, the section heading and subdivision 2 as amended by chapter 683 of the laws of 1947 and subdivision 1 as amended by chapter 241 of the laws of 1981, is amended to read as follows:

S 240. Scaffolding and other devices for use of employees. 1. All contractors and owners and their agents, except owners of one and two-

family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected DEVICES OR EQUIPMENT for the performance of such labor, SUCH AS scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, AND ropes, [and other devices which] WHERE SUCH DEVICES OR EQUIPMENT ARE NECESSARY TO GIVE REASONABLE AND ADEQUATE PROTECTION AND SAFETY TO A PERSON SO EMPLOYED. WHERE SUCH DEVICES OR EQUIPMENT ARE FURNISHED OR ERECTED, THE DEVICES OR EQUIPMENT shall be so constructed, placed and operated as to [give proper] PROVIDE REASONABLE AND ADEQUATE protection AND SAFETY to a person so employed.

No liability pursuant to this subdivision for the failure to provide protection to a person so employed shall be imposed on professional engineers as provided for in article one hundred forty-five of the education law, architects as provided for in article one hundred forty-seven of such law or landscape architects as provided for in article one hundred forty-eight of such law who do not direct or control the work for activities other than planning and design. This exception shall not diminish or extinguish any liability of professional engineers or architects or landscape architects arising under the common law or any other provision of law.

2. [Scaffolding or staging more than twenty feet from the ground or floor, swung or suspended from an overhead support or erected with stationary supports, except scaffolding wholly within the interior of a building and covering the entire floor space of any room therein, shall have a safety rail of suitable material properly attached, bolted, braced or otherwise secured, rising at least thirty-four inches above the floor or main portions of such scaffolding or staging and extending along the entire length of the outside and the ends thereof, with only such openings as may be necessary for the delivery of materials. Such scaffolding or staging shall be so fastened as to prevent it from swaying from the building or structure.

3. All scaffolding shall be so constructed as to bear four times the maximum weight required to be dependent therefrom or placed thereon when in use] COMPLIANCE WITH APPLICABLE PROVISIONS OF THE FEDERAL OCCUPATIONAL SAFETY AND HEALTH ACT AND PART 23 OF TITLE 12 OF THE NEW YORK CODES, RULES AND REGULATIONS, AS AMENDED, SHALL BE PRIMA FACIE PROOF OF COMPLIANCE WITH SUBDIVISION ONE OF THIS SECTION.

3. NOTHING IN THIS SECTION SHALL BE DEEMED TO RELIEVE A PERSON INJURED IN THE ERECTION, DEMOLITION, REPAIRING, ALTERING, PAINTING, CLEANING OR POINTING OF A BUILDING OR STRUCTURE FROM THE CONSEQUENCES OF HIS OR HER CULPABLE CONDUCT IN ACCORDANCE WITH SECTION FOURTEEN HUNDRED ELEVEN OF THE CIVIL PRACTICE LAW AND RULES.

S 12. Section 241 of the labor law, as added by chapter 1108 of the laws of 1969, the opening paragraph as amended by chapter 670 of the laws of 1980, subdivisions 6, 7 and 8 as amended and subdivision 10 as added by chapter 520 of the laws of 1989, subdivision 9 as added by chapter 241 of the laws of 1981, is amended to read as follows:

S 241. Construction, excavation and demolition work. 1. All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, when constructing or demolishing buildings or doing any excavating in connection therewith, shall [comply with the following requirements:

1. If the floors are to be arched between the beams thereof, or if the floors or filling in between the floors are of fireproof material, the flooring or filling in shall be completed as the building progresses.

2. If the floors are not to be filled in between the beams with brick or other fireproof material, the underflooring shall be laid on each story as the building progresses.

3. If double floors are not to be used, the floor two stories immediately below the story where the work is being performed shall be kept planked over.

4. If the floor beams are of iron or steel, the entire tier of iron or steel beams on which the structural iron or steel work is being erected shall be thoroughly planked over, except spaces reasonably required for proper construction of the iron or steel work, for raising or lowering of materials or for stairways and elevator shafts designated by the plans and specifications.

5. If elevators, elevating machines or hod-hoisting apparatus are used in the course of construction, for the purpose of lifting materials, the shafts or openings in each floor and at each landing level shall be inclosed or fenced in on all sides by a barrier of suitable height, except on two sides which may be used for taking off and putting on materials, and those sides shall be guarded by an adjustable barrier not less than three nor more than four feet from the floor and not less than two feet from the edges of such shafts or openings.

6. All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted] CONSTRUCT, SHORE, EQUIP, GUARD, ARRANGE, OPERATE AND CONDUCT SUCH WORK SO as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places. The commissioner may make rules to carry into effect the provisions of this subdivision, and the owners and contractors and their agents for such work, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall comply therewith.

[7. The commissioner may make rules to provide for the protection of workers in connection with the excavation work for the construction of buildings, the work of constructing or demolishing buildings and structures, and the guarding of dangerous machinery used in connection therewith, and the owners and contractors and their agents for such work, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall comply therewith.

8.] 2. COMPLIANCE WITH APPLICABLE PROVISIONS OF THE FEDERAL OCCUPATIONAL SAFETY AND HEALTH ACT AND PART 23 OF TITLE 12 OF THE NEW YORK CODES, RULES AND REGULATIONS, AS AMENDED, SHALL BE PRIMA FACIE PROOF OF COMPLIANCE WITH SUBDIVISION ONE OF THIS SECTION.

3. NOTHING IN THIS SECTION SHALL BE DEEMED TO RELIEVE A PERSON INJURED IN THE CONSTRUCTION, DEMOLITION OR EXCAVATION OF A BUILDING OR STRUCTURE FROM THE CONSEQUENCES OF HIS OR HER CULPABLE CONDUCT IN ACCORDANCE WITH SECTION FOURTEEN HUNDRED ELEVEN OF THE CIVIL PRACTICE LAW AND RULES.

4. The commissioner, as deemed necessary, shall promulgate rules designed for the purpose of providing for the reasonable and adequate protection and safety of persons passing by all areas, buildings or structures in which construction, excavation or demolition work is being performed, and the owners and contractors and their agents for such work, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall comply therewith. The provisions of this subdivision shall not apply to cities having a population of one million or more.

[9.] 5. No liability for the non-compliance with any of the provisions of this section shall be imposed on professional engineers as

provided for in article one hundred forty-five of the education law, architects as provided for in article one hundred forty-seven of such law or landscape architects as provided for in article one hundred forty-eight of such law who do not direct or control the work for activities other than planning and design. This exception shall not diminish or extinguish any liability of professional engineers, architects or landscape architects arising under the common law or any other provision of law.

[10.] 6. Prior to advertising for bids or contracting for or commencing work on any demolition work on buildings covered under this section except agricultural buildings as defined in regulations promulgated by the commissioner and except buildings the construction of which was begun on or after January first, nineteen hundred seventy-four, all owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall conduct or cause to be conducted a survey to determine whether or not the building to be demolished contains asbestos or asbestos material as defined in section nine hundred one of this chapter. Such surveys shall be conducted in conformance with rules and regulations promulgated by the commissioner. Information derived from such survey shall be immediately transmitted to the commissioner and to the local governmental entity charged with issuing a permit for such demolition under applicable state or local laws or, if no such permit is required, to the town or city clerk. If such survey finds that a building to be demolished contains asbestos or asbestos material as defined by section nine hundred one of [the] THIS chapter, no bids shall be advertised nor contracts awarded nor demolition work commenced by any owner or agent prior to completion of an asbestos remediation contract performed by a licensed asbestos contractor as defined by section nine hundred one of this chapter.

S 13. Section 241-a of the labor law is REPEALED.

S 14. Subdivision 8 of section 1602 of the civil practice law and rules is REPEALED.

S 15. The opening paragraph of subdivision 3 of section 30 of the labor law, as added by chapter 162 of the laws of 1993, is amended to read as follows:

Except for variations concerning provisions, rules, codes, orders or any other matter affecting asbestos projects or safety and health standards for public employees, including but not limited to projects covered by article thirty and section twenty-seven-a and subdivision [ten] SIX of section two hundred forty-one of this chapter;

S 16. Section 1603 of the civil practice law and rules, as amended by chapter 635 of the laws of 1996, is amended to read as follows:

S 1603. Burdens of proof. In any action or claim for damages for personal injury a party asserting that the limitations on liability set forth in this article do not apply shall allege and prove by a preponderance of the evidence that one or more of the exemptions set forth in subdivision one of section sixteen hundred one [or section sixteen hundred two] applies. A party asserting limited liability pursuant to this article shall have the burden of proving by a preponderance of the evidence its equitable share of the total liability.

S 17. 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.