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

887--A

2011-2012 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. ORTIZ, SCARBOROUGH, PERRY, LUPARDO, BENEDETTO, COOK, GUNTHER, COLTON, N. RIVERA, CUSICK, SCHIMEL -- Multi-Sponsored by -- M. of A. ABBATE, BOYLAND, CAHILL, CLARK, JACOBS, JAFFEE, V. LOPEZ, MAISEL, MILLMAN, NOLAN, PEOPLES-STOKES, REILLY, ROBINSON, SWEENEY, WEISENBERG -- read once and referred to the Committee on Labor -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the workers' compensation law, in relation to establishing the veterans' special disability fund to provide incentives to employers to hire veterans who have sustained an injury or physical impairment during military active duty

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

Section 1. Clause (A) of subparagraph 2 of paragraph (h) of subdivision 8 of section 15 of the workers' compensation law, as amended by chapter 6 of the laws of 2007, is amended and a new subparagraph 8 is added to read as follows:

(A) No carrier or employer, or the state insurance fund, may file a claim for reimbursement from the special disability fund, for an injury or illness with a date of accident or date of disablement on or after July first, two thousand seven UNLESS SUCH CLAIM SEEKS REIMBURSEMENT PURSUANT TO THE VETERANS' SPECIAL DISABILITY FUND AS ESTABLISHED IN SUBPARAGRAPH EIGHT OF THIS PARAGRAPH. No carrier or employer, or the state insurance fund, may file a claim for reimbursement from the special disability fund after July first, two thousand ten, and no written submissions or evidence in support of such a claim may be submitted after that date.

(8)(A) ON OR AFTER JULY FIRST, TWO THOUSAND TWELVE, AN EMPLOYER, OR THE EMPLOYER'S INSURANCE CARRIER, MAY FILE A CLAIM FOR REIMBURSEMENT

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

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FROM THE VETERANS' SPECIAL DISABILITY FUND, AS ESTABLISHED IN CLAUSE (D) OF THIS SUBPARAGRAPH, FOR WAGES PAID TO A CLAIMANT FOR PERMANENT TOTAL OR PARTIAL DISABILITY OF THE CLAIMANT. SUCH CLAIM MAY BE FILED REGARDLESS OF THE DATE SUCH INJURY, IMPAIRMENT OR DISABLEMENT WAS SUSTAINED BY THE VETERAN.

(B) AN EMPLOYER OR INSURANCE CARRIER SHALL BE FULLY REIMBURSED FOR THE TOTAL WAGES PAID TO A CLAIMANT FOR THE TOTAL PERIOD OF DISABILITY RESULTING FROM THE COMPENSABLE INJURY SUSTAINED BY SUCH CLAIMANT DURING EMPLOYMENT AND SUCH COMPENSATION TO THE CLAIMANT, OR REIMBURSEMENT TO SUCH EMPLOYER, SHALL EQUAL THE TOTAL WAGES PAID UNDER THE AWARD SCHEDULE OF COMPENSATION FOR PERMANENT TOTAL DISABILITY AS IS PRESCRIBED IN THIS SECTION.

(C) AN EMPLOYER SHALL BE ENTITLED TO SUCH REIMBURSEMENT IF: (I) THE CLAIMANT SUSTAINED AN INJURY OR PHYSICAL IMPAIRMENT DURING ACTIVE MILITARY DUTY PRIOR TO EMPLOYMENT, (II) THE EMPLOYER WAS AWARE OF THE PRE-EXISTING INJURY OR IMPAIRMENT UPON HIRING THE CLAIMANT AND (III) THE PRE-EXISTING INJURY OR IMPAIRMENT MATERIALLY AND SUBSTANTIALLY RESULTED IN THE PERMANENT COMPENSABLE DISABILITY OF THE CLAIMANT.

(D) A FUND IS HEREBY ESTABLISHED UNDER THE AUSPICES OF THE BOARD AND THE DEPARTMENT OF TAXATION AND FINANCE TO RETAIN THE LIABILITIES CHARGEABLE UNDER THIS CLAUSE. THE SAID FUND SHALL BE KNOWN AND REFERRED TO AS THE "VETERANS' SPECIAL DISABILITY FUND" AND SHALL BE AVAILABLE ONLY FOR THE PURPOSES STATED WITHIN THIS CLAUSE, AND THE ASSETS OF SAID FUND SHALL NOT AT ANY TIME BE APPROPRIATED OR DIVERTED TO ANY OTHER USE OF PURPOSE. SUCH FUND SHALL BE MAINTAINED AND PROVIDED FOR BY THE BOARD AND THE DEPARTMENT OF TAXATION AND FINANCE COLLECTIVELY. THE CHAIR SHALL ASSESS UPON AND COLLECT FROM EACH INSURANCE CARRIER, INCLUDING THE STATE INSURANCE FUND, AND ANY COUNTY, CITY, TOWN, VILLAGE OR OTHER POLITICAL SUBDIVISION FAILING TO SECURE COMPENSATION, A SUM EQUAL TO A PERCENTAGE, OF THE TOTAL COMPENSATION PAID BY INSURANCE CARRIERS FOR THE YEAR ENDING MARCH THIRTY-FIRST NEXT PRECEDING THE DATE OF SUCH ASSESSMENT.

(I) THE CHAIR AND THE COMMISSIONER OF TAXATION AND FINANCE SHALL DETERMINE THE EXACT RATE OF ASSESSMENT TO BE MADE AGAINST INSURANCE CARRIERS TO FUND THE VETERANS' SPECIAL DISABILITY FUND AND SHALL REASSESS SUCH ASSESSMENTS ON AN ANNUAL BASIS. SUCH ASSESSMENTS SHALL BE INITIALLY BASED UPON THE ASSESSMENTS SET FORTH PURSUANT TO FORMER SUBDIVISION EIGHT OF THIS SECTION AS IT EXISTED IMMEDIATELY PRIOR TO THE EFFECTIVE DATE OF CHAPTER SIX OF THE LAWS OF TWO THOUSAND SEVEN. A CLAIM SOUGHT PURSUANT TO THIS CLAUSE SHALL COMPLY WITH ALL OTHER PROVISIONS OF THIS SECTION.

(II) THE CHAIR AND THE COMMISSIONER OF TAXATION AND FINANCE ARE FURTHER AUTHORIZED AND DIRECTED TO ENTER INTO FINANCIAL AGREEMENTS FOR THE VETERANS' SPECIAL DISABILITY FUND. SUCH AN AGREEMENT SHALL BE KNOWN AND REFERRED TO AS THE "VETERANS' SPECIAL DISABILITY FUND FINANCIAL AGREEMENT".

(III) THE COMMISSIONER OF TAXATION AND FINANCE IS HEREBY AUTHORIZED TO RECEIVE AND CREDIT TO THE VETERANS' SPECIAL DISABILITY FUND ANY SUM OR SUMS WHICH MAY, AT ANY TIME, BE CONTRIBUTED TO THE STATE BY THE UNITED STATES OF AMERICA UNDER ANY ACT OF CONGRESS, OR OTHERWISE, TO WHICH THE STATE MAY BE OR BECOME ENTITLED BY REASON OF ANY PAYMENTS MADE OUT OF SUCH FUND. THE COMMISSIONER OF TAXATION AND FINANCE SHALL BE THE CUSTODIAN OF SUCH FUND AND, UNLESS OTHERWISE PROVIDED FOR IN THE VETERANS' SPECIAL DISABILITY FUND FINANCING AGREEMENT, SHALL INVEST ANY SURPLUS OR RESERVE MONEYS THEREOF IN SECURITIES WHICH CONSTITUTE LEGAL INVESTMENTS FOR SAVINGS BANKS UNDER THE LAWS OF THIS STATE AND IN INTEREST BEARING CERTIFICATES OF DEPOSIT OF A BANK OR TRUST COMPANY LOCATED AND AUTHOR-

IZED TO DO BUSINESS IN THIS STATE OR OF A NATIONAL BANK LOCATED IN THIS STATE SECURED BY A PLEDGE OF DIRECT OBLIGATIONS OF THE UNITED STATES OR OF THE STATE OF NEW YORK IN AN AMOUNT EQUAL TO THE AMOUNT OF SUCH CERTIFICATES OF DEPOSIT, AND MAY SELL ANY OF THE SECURITIES OR CERTIFICATES OF DEPOSIT WHICH SUCH FUND IS INVESTED IF NECESSARY FOR THE PROPER ADMINISTRATION OR IN THE BEST INTEREST OF SUCH FUND. DISBURSEMENTS FROM SUCH FUND AS PROVIDED PURSUANT TO THIS CLAUSE SHALL BE MADE BY THE COMMISSIONER OF TAXATION AND FINANCE UPON VOUCHERS SIGNED BY THE CHAIR.

S 2. The chair of the workers' compensation board and the commissioner of taxation and finance shall on the one hundred twentieth day after subparagraph 8 of paragraph (h) of subdivision 8 of section 15 of the workers' compensation law takes effect, determine the rate and/or percentage of compensation to be assessed and collected upon insurance carriers for the veterans' special disability fund.

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that the chair of the workers' compensation board and the commissioner of taxation and finance shall be authorized and directed to promulgate any rules and/or regulations necessary for the implementation of this act on or before its effective date.