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

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2011-2012 Regular Sessions

I N S E N A T E

February 2, 2011

Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to active self-insurers

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

Section 1. The opening paragraph of 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:

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 ALL ACTIVE group self-insurers, (A) a sum equal to one hundred fifty 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 ALL ACTIVE group self-insurers, (ii) insurance carriers based upon the

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

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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 ALL ACTIVE group self-insurers during the fiscal year which ended within said preceding calendar year, and (iii) ALL ACTIVE group self-insurers based upon the proportion that the total compensation payments made by all ACTIVE group self-insurers bore to the total compensation payments made by all self-insurers (EXCEPT INACTIVE GROUP 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 AND ACTIVE GROUP 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 standard premium reported by all insurance carriers during the calendar year which ended within said preceding fiscal year. The portion of such sum allocated to ACTIVE group self-insurers that shall be collected from each ACTIVE GROUP self-insurer shall be a sum equal to that proportion of the amount which the pure premium calculation for each such ACTIVE group self-insurer bore to the total pure premium calculation for all ACTIVE 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] AN ACTIVE 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] AN 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 INDIVIDUAL 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.

S 2. Paragraphs (b) and (c) of subdivision 2 of section 151 of the workers' compensation law, paragraph (b) as amended by section 2 of part QQ of chapter 56 of the laws of 2009 and paragraph (c) as amended by chapter 6 of the laws of 2007, are amended to read as follows:

(b) An itemized statement of the expenses so ascertained shall be open to public inspection in the office of the board for thirty days after notice to the state insurance fund, all insurance carriers and all self-insurers including ALL ACTIVE group self-insurers affected thereby, before the board shall make an assessment for such expenses. The chair shall assess upon and collect a proportion of such expenses as hereinafter provided from each insurance carrier, the state insurance fund and each self-insurer including ALL ACTIVE group self-insurers. The assessment for such expenses 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 in such year bore to the total compensation payments made by all self-insurers except group self-insurers, the state insurance fund, all insurance carriers and ALL ACTIVE group self-insurers and (ii) insurance carriers based upon the proportion that the total compensation payments made by all insurance carriers in such year bore to the total compensation payments by all self-insurers, the state insurance fund and all insurance carriers, and (iii) ACTIVE group self-insurers based upon the proportion that the total compensation payments made by all ACTIVE group self-insurers

in such year bore to the total compensation payments made by all self-insurers (EXCEPT INACTIVE GROUP SELF-INSURERS), the state insurance fund and all insurance carriers. The portion of the assessment for such expenses allocated to self-insurers except group self-insurers and the state insurance fund that shall be collected from each self-insurer except group self-insurers 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 in such year bore to the total compensation payments made by all self-insurers except group self-insurers and the state insurance fund. The portion of the assessment for such expenses allocated to insurance carriers that shall be collected from each such 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 standard premium reported by all insurance carriers for the calendar year which ended with the state fiscal year. The portion of such sum allocated to ACTIVE group self-insurers that shall be collected from each ACTIVE 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 state fiscal year. The amounts so secured shall be used for the payment of the expenses of administering this chapter. Pure premium for assessments against individual [and group self-insurers] who ceased to self-insure shall be based on payroll at the time the individual [or group self-insurer] has 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.

For 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] AN ACTIVE group self-insurer multiplied by the applicable rate for each class code as determined by the workers' compensation rating board in effect on December thirty-first of the preceding year. The amounts so secured shall be used for the payment of the expenses of administering this chapter.

For the purposes of this paragraph, 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 and 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.

(c) Assessments for the special disability fund, the fund for reopened cases and for the operations of the board shall not constitute elements of loss but shall for collection purposes be treated as separate costs by carriers. All ACTIVE group self-insurers shall collect such assessments from their employer members in a fair and equitable manner. All insurance carriers, including the state insurance fund, shall collect such assessments from their policyholders through a surcharge based on premium in accordance with rules set forth by the New York workers' compensation rating board, as approved by the superintendent of insurance. 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.

S 3. This act shall take effect January 1, 2012, and shall apply to any assessment cycle beginning on and after such date.