

7038

I N S E N A T E

April 25, 2012

Introduced by Sen. KENNEDY -- 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 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:

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

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

15 (8)(A) ON OR AFTER JULY FIRST, TWO THOUSAND TWELVE, AN EMPLOYER, OR  
16 THE EMPLOYER'S INSURANCE CARRIER, MAY FILE A CLAIM FOR REIMBURSEMENT  
17 FROM THE VETERANS' SPECIAL DISABILITY FUND, AS ESTABLISHED IN CLAUSE (D)  
18 OF THIS SUBPARAGRAPH, FOR WAGES PAID TO A CLAIMANT FOR PERMANENT TOTAL  
19 OR PARTIAL DISABILITY OF THE CLAIMANT. SUCH CLAIM MAY BE FILED REGARD-  
20 LESS OF THE DATE SUCH INJURY, IMPAIRMENT OR DISABLEMENT WAS SUSTAINED BY  
21 THE VETERAN.

22 (B) AN EMPLOYER OR INSURANCE CARRIER SHALL BE FULLY REIMBURSED FOR THE  
23 TOTAL WAGES PAID TO A CLAIMANT FOR THE TOTAL PERIOD OF DISABILITY  
24 RESULTING FROM THE COMPENSABLE INJURY SUSTAINED BY SUCH CLAIMANT DURING  
25 EMPLOYMENT AND SUCH COMPENSATION TO THE CLAIMANT, OR REIMBURSEMENT TO  
26 SUCH EMPLOYER, SHALL EQUAL THE TOTAL WAGES PAID UNDER THE AWARD SCHEDULE

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

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1 OF COMPENSATION FOR PERMANENT TOTAL DISABILITY AS IS PRESCRIBED IN THIS  
2 SECTION.

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

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

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

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

36 (III) THE COMMISSIONER OF TAXATION AND FINANCE IS HEREBY AUTHORIZED TO  
37 RECEIVE AND CREDIT TO THE VETERANS' SPECIAL DISABILITY FUND ANY SUM OR  
38 SUMS WHICH MAY, AT ANY TIME, BE CONTRIBUTED TO THE STATE BY THE UNITED  
39 STATES OF AMERICA UNDER ANY ACT OF CONGRESS, OR OTHERWISE, TO WHICH THE  
40 STATE MAY BE OR BECOME ENTITLED BY REASON OF ANY PAYMENTS MADE OUT OF  
41 SUCH FUND. THE COMMISSIONER OF TAXATION AND FINANCE SHALL BE THE CUSTO-  
42 DIAN OF SUCH FUND AND, UNLESS OTHERWISE PROVIDED FOR IN THE VETERANS'  
43 SPECIAL DISABILITY FUND FINANCING AGREEMENT, SHALL INVEST ANY SURPLUS OR  
44 RESERVE MONEYS THEREOF IN SECURITIES WHICH CONSTITUTE LEGAL INVESTMENTS  
45 FOR SAVINGS BANKS UNDER THE LAWS OF THIS STATE AND IN INTEREST BEARING  
46 CERTIFICATES OF DEPOSIT OF A BANK OR TRUST COMPANY LOCATED AND AUTHOR-  
47 IZED TO DO BUSINESS IN THIS STATE OR OF A NATIONAL BANK LOCATED IN THIS  
48 STATE SECURED BY A PLEDGE OF DIRECT OBLIGATIONS OF THE UNITED STATES OR  
49 OF THE STATE OF NEW YORK IN AN AMOUNT EQUAL TO THE AMOUNT OF SUCH  
50 CERTIFICATES OF DEPOSIT, AND MAY SELL ANY OF THE SECURITIES OR CERTIF-  
51 ICATES OF DEPOSIT WHICH SUCH FUND IS INVESTED IF NECESSARY FOR THE PROP-  
52 ER ADMINISTRATION OR IN THE BEST INTEREST OF SUCH FUND. DISBURSEMENTS  
53 FROM SUCH FUND AS PROVIDED PURSUANT TO THIS CLAUSE SHALL BE MADE BY THE  
54 COMMISSIONER OF TAXATION AND FINANCE UPON VOUCHERS SIGNED BY THE CHAIR.

55 S 2. The chair of the workers' compensation board and the commissioner  
56 of taxation and finance shall on the one hundred twentieth day after

1 subparagraph 8 of paragraph (h) of subdivision 8 of section 15 of the  
2 workers' compensation law takes effect, determine the rate and/or  
3 percentage of compensation to be assessed and collected upon insurance  
4 carriers for the veterans' special disability fund.  
5 S 3. This act shall take effect on the one hundred twentieth day after  
6 it shall have become a law; provided, however, that the chair of the  
7 workers' compensation board and the commissioner of taxation and finance  
8 shall be authorized and directed to promulgate any rules and/or regu-  
9 lations necessary for the implementation of this act on or before its  
10 effective date.