

5754

2013-2014 Regular Sessions

I N   S E N A T E

June 12, 2013

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Introduced by Sen. NOZZOLIO -- 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 personal injury or wrongful death actions

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

1     Section 1. Section 11 of the workers' compensation law, as amended by  
2 chapter 635 of the laws of 1996, the opening paragraph as amended by  
3 chapter 169 of the laws of 2007, the fifth undesignated paragraph as  
4 added by chapter 49 of the laws of 1999 and the closing paragraph as  
5 added by chapter 392 of the laws of 2008, is amended to read as follows:  
6     S 11. Alternative remedy. (A) The liability of an employer prescribed  
7 by the last preceding section shall be exclusive and in place of any  
8 other liability whatsoever, to such employee, his or her personal repre-  
9 sentatives, spouse, parents, dependents, distributees, or any person  
10 otherwise entitled to recover damages, contribution or indemnity, at  
11 common law or otherwise, on account of such injury or death or liability  
12 arising therefrom, except that if an employer fails to secure the  
13 payment of compensation for his or her injured employees and their  
14 dependents as provided in section fifty of this chapter, an injured  
15 employee, or his or her legal representative in case of death results  
16 from the injury, may, at his or her option, elect to claim compensation  
17 under this chapter, or to maintain an action in the courts for damages  
18 on account of such injury; and in such an action it shall not be neces-  
19 sary to plead or prove freedom from contributory negligence nor may the  
20 defendant plead as a defense that the injury was caused by the negli-  
21 gence of a fellow servant nor that the employee assumed the risk of his  
22 or her employment, nor that the injury was due to the contributory  
23 negligence of the employee. The liability under this chapter of The New  
24 York Jockey Injury Compensation Fund, Inc. created under section two  
25 hundred [thirteen-a] TWENTY-ONE of the racing, pari-mutuel wagering and  
26 breeding law shall be limited to the provision of workers' compensation  
27 coverage to jockeys, apprentice jockeys and exercise persons licensed  
28 under article two or four of the racing, pari-mutuel wagering and breed-

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

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1 ing law and any statutory penalties resulting from the failure to  
2 provide such coverage.

3 For purposes of this section the terms "indemnity" and "contribution"  
4 shall not include a claim or cause of action for contribution or indem-  
5 nification based upon a provision in a written contract entered into  
6 prior to the accident or occurrence by which the employer had expressly  
7 agreed to contribution to or indemnification of the claimant or person  
8 asserting the cause of action for the type of loss suffered.

9 An employer shall not be liable for contribution or indemnity to any  
10 third person based upon liability for injuries sustained by an employee  
11 acting within the scope of his or her employment for such employer  
12 unless such third person proves through competent medical evidence that  
13 such employee has sustained a "grave injury" which shall mean only one  
14 or more of the following: death, permanent and total loss of use or  
15 amputation of an arm, leg, hand or foot, loss of multiple fingers, loss  
16 of multiple toes, paraplegia or quadriplegia, total and permanent blind-  
17 ness, total and permanent deafness, loss of nose, loss of ear, permanent  
18 and severe facial disfigurement, loss of an index finger or an acquired  
19 injury to the brain caused by an external physical force resulting in  
20 permanent total disability.

21 For purposes of this section "person" means any individual, firm,  
22 company, partnership, corporation, joint venture, joint-stock associ-  
23 ation, association, trust or legal entity.

24 The liability under this chapter of the New York black car operators'  
25 injury compensation fund, inc. shall be limited to: (i) securing the  
26 payment of workers' compensation in accordance with article six-F of the  
27 executive law to black car operators, as defined in such article, whose  
28 injury arose out of and in the course of providing services for a  
29 central dispatch facility, as defined in such article, that is a regis-  
30 tered member of such fund, and (ii) any statutory penalty resulting from  
31 the failure to secure such payment. The liability under this chapter of  
32 a central dispatch facility, as defined in article six-F of the execu-  
33 tive law, that is a registered member of the New York black car opera-  
34 tors' injury compensation fund, inc. that shall be limited to remaining  
35 a registered member in good standing of such fund and any statutory  
36 penalty, including loss of immunity provided by this section, resulting  
37 from the failure to become or remain a registered member in good stand-  
38 ing of such fund, except, however, that such central dispatch facility  
39 shall be subject to the provisions of section one hundred thirty-one of  
40 this chapter and shall be liable for any payments for which it may  
41 become responsible pursuant to such section or pursuant to section four-  
42 teen-a of this chapter.

43 The liability under this chapter of the New York independent livery  
44 driver benefit fund, inc. shall be limited to: (i) securing the payment  
45 of workers' compensation coverage to cover those matters required by  
46 article six-G of the executive law for independent livery drivers, as  
47 defined in such article, whose injury arose out of and in the course of  
48 providing covered services for a livery base, as defined in such arti-  
49 cle, that is a registered member of such fund, and (ii) any statutory  
50 penalty resulting from the failure to secure such payment.

51 (B) DETERMINATIONS BY THE BOARD AS TO CAUSE OF INJURY, DEGREE OF DISA-  
52 BILITY, LOST EARNINGS, NEED FOR FUTURE MEDICAL CARE, AND/OR PERMANENCY  
53 OF INJURY SHALL NOT BE GIVEN PRECLUSIVE EFFECT IN ANY OTHER FORUM, COURT  
54 OR PROCEEDING.

55 S 2. This act shall take effect immediately.