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

7862

I N S E N A T E

June 16, 2014

Introduced by Sen. SAVINO -- (at request of the State Insurance Fund) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the workers' compensation law, in relation to ensuring proper payroll auditing of policies for workers' compensation insurance

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

Section 1. Subdivision 5 of section 54 of the workers' compensation law, as amended by section 23 of part GG of chapter 57 of the laws of 2013, is amended to read as follows:

5. Cancellation and termination of insurance contracts. No contract of insurance issued by an insurance carrier against liability arising under this chapter shall be cancelled within the time limited in such contract for its expiration unless notice is given as required by this section. When cancellation is due to non-payment of premiums and assessments, such cancellation shall not be effective until at least ten days after a notice of cancellation of such contract, on a date specified in such notice, shall be filed in the office of the chair and also served on the employer. When cancellation is due to any reason other than non-payment of premiums and assessments, such cancellation shall not be effective until at least thirty days after a notice of cancellation of such contract, on a date specified in such notice, shall be filed in the office of the chair and also served on the employer; provided, however, in either case, that if the employer has secured insurance with another insurance carrier which becomes effective prior to the expiration of the time stated in such notice, the cancellation shall be effective as of the date of such other coverage. No insurer shall refuse to renew any policy insuring against liability arising under this chapter unless at least thirty days prior to its expiration notice of intention not to renew has been filed in the office of the chair and also served on the employer.

Such notice shall be served on the employer by delivering it to him, her or it or by sending it by mail, by certified or registered letter, return receipt requested, addressed to the employer at his, her or its last known place of business; provided that, if the employer be a partnership, then such notice may be so given to any of one of the partners,

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

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and if the employer be a corporation then the notice may be given to any agent or officer of the corporation upon whom legal process may be served; and further provided that an employer may designate any person or entity at any address to receive such notice including the designation of one person or entity to receive notice on behalf of multiple entities insured under one insurance policy and that service of notice at the address so designated upon the person or entity so designated by delivery or by mail, by certified or registered letter, return receipt requested, shall satisfy the notice requirement of this section. [Provided, however, the] THE right to cancellation of a policy of insurance in the state INSURANCE fund, HOWEVER shall be exercised only for non-payment of premiums and assessments, OR FAILURE BY THE EMPLOYER TO COOPERATE WITH A PAYROLL AUDIT, or as provided in section ninety-four of this chapter. THE STATE INSURANCE FUND MAY CANCEL A POLICY FOR THE EMPLOYER'S FAILURE TO COOPERATE WITH A PAYROLL AUDIT IF THE EMPLOYER FAILS TO (A) KEEP AN APPOINTMENT WITH A PAYROLL AUDITOR, AFTER THE STATE INSURANCE FUND HAS MADE AT LEAST TWO ATTEMPTS TO SCHEDULE AN APPOINTMENT DURING THE EMPLOYER'S REGULAR BUSINESS HOURS, WHEN SUCH EMPLOYER IS PROVIDED ADVANCE WRITTEN NOTICE OF SUCH APPOINTMENTS OR (B) FURNISH BUSINESS RECORDS IN THE COURSE OF A PAYROLL AUDIT AS REQUIRED PURSUANT TO SECTIONS NINETY-FIVE AND ONE HUNDRED THIRTY-ONE OF THIS CHAPTER. AT LEAST FIFTEEN DAYS IN ADVANCE OF SENDING A NOTICE OF CANCELLATION FOR FAILURE TO COOPERATE WITH A PAYROLL AUDIT, THE STATE INSURANCE FUND SHALL SEND A WARNING NOTICE TO THE EMPLOYER IN THE SAME MANNER AS PROVIDED IN THIS SUBDIVISION FOR SERVING A NOTICE OF CANCELLATION. SUCH NOTICE SHALL SPECIFY A MEANS OF CONTACTING THE STATE INSURANCE FUND TO SET UP AN AUDIT APPOINTMENT. THE STATE INSURANCE FUND WILL BE REQUIRED TO PROVIDE ONLY ONE SUCH WARNING NOTICE TO AN EMPLOYER RELATED TO ANY PARTICULAR PAYROLL AUDIT PRIOR TO CANCELLATION.

The provisions of this subdivision 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.

In the event such cancellation or termination notice is not filed with the chair within the required time period, the chair shall impose a penalty in the amount of up to five hundred dollars for each ten-day period the insurance carrier or state insurance fund failed to file the notification. All penalties collected pursuant to this subdivision shall be deposited in the uninsured employers' fund.

S 2. Section 93 of the workers' compensation law, as amended by section 24 of part GG of chapter 57 of the laws of 2013, is amended to read as follows:

S 93. Collection of premium in case of default. a. If a policyholder shall default in any payment required to be made by [him] SUCH POLICYHOLDER to the state insurance fund OR SHALL FAIL TO COOPERATE WITH A PAYROLL AUDIT AS SPECIFIED IN SUBDIVISION FIVE OF SECTION FIFTY-FOUR OF THIS CHAPTER, after due notice, [his] SUCH POLICYHOLDER'S insurance in the state INSURANCE fund may be cancelled and the amount due from [him] SUCH POLICYHOLDER shall be collected by civil action brought against [him] SUCH POLICYHOLDER in any county wherein the state insurance fund maintains an office in the name of the commissioners of the state insurance fund and the same when collected, shall be paid into the state insurance fund, and such policyholder's compliance with the provisions of this chapter requiring payments to be made to the state insurance

fund shall date from the time of the payment of said money to the state insurance fund.

b. An employer, whose policy of insurance has been cancelled by the state insurance fund for non-payment of premium and assessments, OR FOR FAILURE TO COOPERATE WITH A PAYROLL AUDIT, or [withdraws] CANCELLED pursuant to section ninety-four of this article, is ineligible to contract for a subsequent policy of insurance with the state insurance fund [while] UNTIL THE STATE INSURANCE FUND RECEIVES FULL COOPERATION FROM SUCH EMPLOYER IN COMPLETING ANY PAYROLL AUDIT ON THE CANCELLED POLICY AND the billed premium on the cancelled policy [remains uncollected] IS PAID, INCLUDING ANY ADDITIONAL AMOUNTS BILLED FOLLOWING THE COMPLETION OF ANY PAYROLL AUDIT.

c. The state insurance fund shall not be required to write a policy of insurance for any employer which is owned or controlled or the majority interest of which is owned or controlled, directly or indirectly, by any person who directly or indirectly owns or controls or owned or controlled at the time of cancellation an employer whose former policy of insurance with the state insurance fund was cancelled for non-payment of premium and assessments, OR FOR FAILURE TO COOPERATE WITH A PAYROLL AUDIT, or [withdraws] CANCELLED pursuant to section ninety-four of this article or who is or was at the time of cancellation the president, vice-president, secretary or treasurer of such an employer until THE STATE INSURANCE FUND RECEIVES FULL COOPERATION FROM SUCH EMPLOYER IN COMPLETING ANY PAYROLL AUDIT AND the billed premium on the cancelled policy is paid, INCLUDING ANY ADDITIONAL AMOUNTS BILLED FOLLOWING THE COMPLETION OF ANY PAYROLL AUDIT.

For purposes of this subdivision, "person" [shall include individuals, partnerships, corporations, and other associations] MEANS ANY INDIVIDUAL, FIRM, COMPANY, PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY, JOINT VENTURE, JOINT-STOCK ASSOCIATION, ASSOCIATION, TRUST OR ANY OTHER LEGAL ENTITY WHATSOEVER.

D. FOR THE PURPOSES OF THIS SECTION, THE WORD "PREMIUM" INCLUDES ALL AMOUNTS REQUIRED TO BE PAID TO THE STATE INSURANCE FUND INCLUDING ANY ASSESSMENT BY THE WORKERS' COMPENSATION BOARD THAT THE STATE INSURANCE FUND BILLS TO AN EMPLOYER.

S 3. Section 95 of the workers' compensation law, as amended by chapter 135 of the laws of 1998, is amended to read as follows:

S 95. Record and audit of payrolls. (1) Every employer who is insured in the state insurance fund shall keep a true and accurate record of the number of [his] ITS employees, THE CLASSIFICATION OF ITS EMPLOYEES, INFORMATION REGARDING EMPLOYEE ACCIDENTS and the wages paid by [him] SUCH EMPLOYER, AS WELL AS SUCH RECORDS RELATING TO ANY PERSON PERFORMING SERVICES UNDER A SUBCONTRACT WITH SUCH EMPLOYER THAT IS NOT COVERED UNDER THE SUBCONTRACTOR'S OWN WORKERS' COMPENSATION INSURANCE POLICY, and shall furnish, upon demand, a sworn statement of the same. Such record AND ANY OTHER RECORDS OF AN EMPLOYER CONTAINING SUCH INFORMATION PERTAINING TO ANY POLICY PERIOD INCLUDING, BUT NOT LIMITED TO, ANY LEDGERS, JOURNALS, REGISTERS, VOUCHERS, CONTRACTS, TAX RETURNS AND REPORTS, PAYROLL AND DISTRIBUTION RECORDS, AND COMPUTER PROGRAMS FOR RETRIEVING DATA, CERTIFICATES OF INSURANCE PERTAINING TO SUBCONTRACTORS AND ANY OTHER BUSINESS RECORDS SPECIFIED BY THE RULES OF THE BOARD shall be open to inspection BY THE STATE INSURANCE FUND at any time and as often as may be necessary to verify the number of employees [and], the amount of the payroll, THE CLASSIFICATION OF EMPLOYEES AND INFORMATION REGARDING EMPLOYEE ACCIDENTS. Any employer who shall fail to keep [such] ANY record REQUIRED IN THIS SECTION, who shall willfully fail to

furnish such record or who shall willfully falsify any such record[,] shall be guilty of a misdemeanor AND SUBJECT TO A FINE OF NOT LESS THAN FIVE THOUSAND DOLLARS NOR MORE THAN TEN THOUSAND DOLLARS IN ADDITION TO ANY OTHER PENALTIES OTHERWISE PROVIDED BY LAW, EXCEPT THAT ANY SUCH EMPLOYER THAT HAS PREVIOUSLY BEEN SUBJECT TO CRIMINAL PENALTIES UNDER THIS SECTION WITHIN THE PRIOR TEN YEARS SHALL BE GUILTY OF A CLASS E FELONY, AND SUBJECT TO A FINE OF NOT LESS THAN TEN THOUSAND DOLLARS NOR MORE THAN TWENTY-FIVE THOUSAND DOLLARS IN ADDITION TO ANY PENALTIES OTHERWISE PROVIDED BY LAW.

(2) Employers subject to [subdivision] SUBSECTION (e) of section two thousand three hundred four of the insurance law and subdivision two of section eighty-nine of this article shall keep a true and accurate record of hours worked for all construction classification employees. The willful failure to keep such record, or the knowing falsification of any such record, may be prosecuted as insurance fraud in accordance with the provisions of section 176.05 of the penal law.

S 4. Subdivision 1 of section 131 of the workers' compensation law, as amended by chapter 6 of the laws of 2007, is amended to read as follows:

(1) Every employer subject to the provisions of this chapter shall keep a true and accurate record of the number of [his or her] ITS employees, the classification of ITS employees, information regarding employee accidents and the wages paid by [him or her] SUCH EMPLOYER for a period of four years after each entry therein, [which] AS WELL AS SUCH RECORDS RELATING TO ANY PERSON PERFORMING SERVICES UNDER A SUBCONTRACT OF SUCH EMPLOYER THAT IS NOT COVERED UNDER THE SUBCONTRACTOR'S OWN WORKERS' COMPENSATION INSURANCE POLICY. SUCH records shall be open to inspection at any time, and as often as may be necessary to verify the same by investigators of the board, by the authorized auditors, accountants or inspectors of the carrier with whom the employer is insured, or by the authorized auditors, accountants or inspectors of any workers' compensation insurance rating board or bureau operating under the authority of the insurance law and of which board or bureau such carrier is a member or the group trust of which the employer is a member. Any and all records required by law to be kept by such employer upon which the employer makes or files a return concerning wages paid to employees AND ANY OTHER RECORDS OF AN EMPLOYER CONTAINING SUCH INFORMATION RELEVANT TO ANY POLICY PERIOD INCLUDING BUT NOT LIMITED TO, ANY LEDGERS, JOURNALS, REGISTERS, VOUCHERS, CONTRACTS, TAX RETURNS AND REPORTS, PAYROLL AND DISTRIBUTION RECORDS, AND COMPUTER PROGRAMS FOR RETRIEVING DATA, CERTIFICATES OF INSURANCE PERTAINING TO SUBCONTRACTORS AND ANY OTHER BUSINESS RECORDS SPECIFIED BY THE RULES OF THE BOARD shall form part of the records described in this section and shall be open to inspection in the same manner as provided in this section. Any employer who shall fail to keep such records, who shall willfully fail to furnish such record as required in this section or who shall falsify any such records, shall be guilty of a misdemeanor and subject to a fine of not less than five nor more than ten thousand dollars in addition to any other penalties otherwise provided by law, except that any such employer that has previously been subject to criminal penalties under this section within the prior ten years shall be guilty of a class E felony, and subject to a fine of not less than ten nor more than twenty-five thousand dollars in addition to any penalties otherwise provided by law.

S 5. This act shall take effect on the ninetieth day after it shall have become a law and shall be applicable to policies issued or renewed after such effective date.