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

786

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. WEPRIN -- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to the assessment upon self-insurers, the state insurance fund, and all insurance carriers to fund the special disability fund

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

Section 1. 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, the opening paragraph, clause (A), and clause (B) as amended by section 1 of part G of chapter 57 of the laws of 2011, and clause (B) as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

(4) 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, the state insurance fund, and all insurance carriers (A) a sum equal to one hundred [fifty] TEN 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 and the state insurance fund based upon the proportion that the total compensation payments made by all self-insurers and the state insurance fund bore to the total compen-

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

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sation payments made by all self-insurers, the state insurance fund, and all insurance carriers, and (ii) insurance carriers based upon the proportion that the total compensation payments made by all insurance carriers bore to the total compensation payments by all 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 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 and the state insurance fund that shall be collected from each 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 or the state insurance fund bore to the total compensation payments made by all 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 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 financial services, in consultation with the chair of the board and the workers' compensation rating board. An employer who has ceased to be a 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 financial services 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 financial services 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, for the purpose of premiums billed on or after October first, nineteen hundred ninety-four. For the purposes of this section, a "self-insurer" shall be: (i) an employer authorized to self-insure under subdivision three of section fifty of this chapter, active groups authorized pursuant to subdivision three-a of section fifty of this chapter or a group of employers authorized to self-insure under paragraph ten of subdivision three-a of section fifty of this chapter; or (ii) a public employer authorized as set forth in paragraph a of subdivision four of section fifty of this chapter to self-insure under subdivision three, three-a or four of such section or article five of this chapter, whether individually or as a group.

For the purposes of this paragraph, except as otherwise provided: 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; 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.

The board is hereby authorized to issue credits or refunds as necessary, in the case of overpayments made to the fund. An insurance carrier that knowingly underreports premiums for the purposes of this section shall be guilty of a class E felony.

S 2. This act shall take effect January 1, 2014.