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

5376--B

Cal. No. 385

2013-2014 Regular Sessions

I N S E N A T E

May 16, 2013

Introduced by Sens. SEWARD, AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the workers' compensation law, in relation to providing incentives for productive workers' compensation audits

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

Section 1. The workers' compensation law is amended by adding a new section 112-a to read as follows:

S 112-A. AUDITS OF EMPLOYERS. 1. (A) EMPLOYERS IN ALL CLASSES OTHER THAN THE CONSTRUCTION CLASS SHALL BE AUDITED NOT LESS FREQUENTLY THAN BIENNIALLY AND THE CHAIR OR BOARD MAY PROVIDE FOR MORE FREQUENT AUDITS OF EMPLOYERS IN SPECIFIED CLASSIFICATIONS BASED ON FACTORS SUCH AS AMOUNT OF PREMIUM, TYPE OF BUSINESS, LOSS RATIOS, OR OTHER RELEVANT FACTORS. IN NO EVENT SHALL EMPLOYERS IN THE CONSTRUCTION CLASS, GENERATING MORE THAN THE AMOUNT OF PREMIUM REQUIRED TO BE EXPERIENCE RATED, BE AUDITED LESS FREQUENTLY THAN ANNUALLY. THE ANNUAL AUDITS REQUIRED FOR CONSTRUCTION CLASSES MAY BE A PHYSICAL, ONSITE REVIEW OF ORIGINAL PAYROLL RECORDS, EMPLOYEE RECORDS, CHECKBOOKS, CASH BOOK (DISBURSEMENTS AND RECEIPTS), GENERAL LEDGER, CONTRACTS, TAX RETURNS INCLUDING QUARTERLY PAYROLL FILINGS, AND ORIGINAL CERTIFICATES OF INSURANCE. THE AUDIT OF ALL EMPLOYERS SHALL BE CONDUCTED NO MORE THAN ONE HUNDRED TWENTY DAYS AFTER THE EXPIRATION OF A POLICY PERIOD. AT THE COMPLETION OF AN AUDIT, IF REQUESTED BY THE AUDITOR, THE EMPLOYER OR OFFICER OF THE CORPORATION MUST PRINT AND SIGN THEIR NAMES ON THE AUDIT DOCUMENT AFFIRMING THE ACCURACY OF THE INFORMATION PROVIDED THEREIN. AS REQUIRED BY SECTION ONE

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

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HUNDRED TWELVE OF THIS ARTICLE, EMPLOYERS SHALL MAKE AVAILABLE ALL BOOKS AND RECORDS NECESSARY FOR THE PAYROLL VERIFICATION AUDIT AND PERMIT THE AUDITOR TO MAKE A PHYSICAL INSPECTION OF THE EMPLOYER'S OPERATION. IF AN EMPLOYER FAILS TO PROVIDE REASONABLE ACCESS TO ALL SUCH BOOKS AND RECORDS NECESSARY FOR A PAYROLL VERIFICATION AUDIT, INCLUDING A PHYSICAL INSPECTION OF THE EMPLOYER'S OPERATION, THE EMPLOYER SHALL PAY A SURCHARGE TO THE CARRIER OF TWO TIMES THE MOST RECENT ESTIMATED ANNUAL PREMIUM.

(B) EMPLOYERS THAT FAIL TO PROVIDE REASONABLE ACCESS TO THE CARRIER FOR THE PURPOSE OF CONDUCTING AN AUDIT SHALL BE REPORTED TO THE NEW YORK COMPENSATION INSURANCE RATING BOARD.

(C) IF AN EMPLOYER KNOWINGLY UNDERSTATES OR KNOWINGLY CONCEALS PAYROLL, KNOWINGLY MISREPRESENTS OR KNOWINGLY CONCEALS EMPLOYEE DUTIES SO AS TO AVOID PROPER CLASSIFICATION FOR PREMIUM CALCULATIONS, OR KNOWINGLY MISREPRESENTS OR KNOWINGLY CONCEALS INFORMATION PERTINENT TO THE COMPUTATION AND APPLICATION OF AN EXPERIENCE RATING MODIFICATION FACTOR, SAID KNOWING MISREPRESENTATIONS OR KNOWING CONCEALMENTS SHALL BE CONSIDERED FRAUDULENT PRACTICES IN VIOLATION OF APPLICABLE PROVISIONS OF SECTION ONE HUNDRED FOURTEEN OF THIS ARTICLE AND INSURANCE FRAUD IN VIOLATION OF APPLICABLE PROVISIONS OF SECTION 176.05 OF THE PENAL LAW.

(D) IF DURING THE COURSE OF AN AUDIT CONDUCTED UNDER THIS SECTION, AN INSURANCE CARRIER OBTAINS INFORMATION INDICATING A VIOLATION OF THE PROVISIONS OF PARAGRAPH (C) OF THIS SUBDIVISION, THEN THE CARRIER SHALL REPORT SUCH INFORMATION TO THE BOARD.

2. THIS SECTION SHALL NOT APPLY TO EMPLOYERS THAT SELF-INSURE OR EMPLOYERS THAT ARE MEMBERS OF A WORKERS' COMPENSATION GROUP SELF-INSURED TRUST.

3. FOR THE PURPOSES OF THIS SECTION, "CONSTRUCTION CLASS" MEANS THE WORK OR OCCUPATION DESCRIBED IN "GROUP 3" OF SUBDIVISION ONE OF SECTION THREE OF THIS CHAPTER.

S 2. This act shall take effect January 1, 2015.