

7552

I N S E N A T E

May 15, 2014

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the volunteer ambulance workers' benefit law and the volunteer firefighters' benefit law, in relation to penalties for false representation and to repeal certain provisions of such laws relating thereto

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

1 Section 1. Section 55 of the volunteer ambulance workers' benefit law
2 is REPEALED and a new section 55 is added to read as follows:
3 S 55. FRAUDULENT PRACTICES. 1. ANY PERSON WHO, KNOWINGLY AND WITH
4 INTENT TO DEFRAUD PRESENTS, CAUSES TO BE PRESENTED, OR PREPARES WITH
5 KNOWLEDGE OR BELIEF THAT IT WILL BE PRESENTED TO OR BY AN INSURER OR
6 PURPORTED INSURER, OR ANY AGENT THEREOF, ANY WRITTEN STATEMENT AS PART
7 OF, OR IN SUPPORT OF, AN APPLICATION FOR THE ISSUANCE OF OR THE RATING
8 OF AN INSURANCE POLICY FOR COMPENSATION INSURANCE, OR A CLAIM FOR
9 PAYMENT OR OTHER BENEFIT PURSUANT TO A COMPENSATION POLICY WHICH HE OR
10 SHE KNOWS TO: (I) CONTAIN A FALSE STATEMENT OR REPRESENTATION CONCERNING
11 ANY FACT MATERIAL THERETO; OR (II) OMITTS ANY FACT MATERIAL THERETO,
12 SHALL BE GUILTY OF A CLASS E FELONY. UPON CONVICTION, THE COURT IN ADDI-
13 TION TO ANY OTHER AUTHORIZED SENTENCE, MAY ORDER FORFEITURE OF ALL
14 RIGHTS TO COMPENSATION OR PAYMENTS OF ANY BENEFIT, AND MAY ALSO REQUIRE
15 RESTITUTION OF ANY AMOUNT RECEIVED AS A RESULT OF A VIOLATION OF THIS
16 SUBDIVISION.
17 2. AN EMPLOYER OR CARRIER, OR ANY EMPLOYEE, AGENT, OR PERSON ACTING ON
18 BEHALF OF AN EMPLOYER OR CARRIER, WHO KNOWINGLY MAKES A FALSE STATEMENT
19 OR REPRESENTATION AS TO A MATERIAL FACT IN THE COURSE OF REPORTING,
20 INVESTIGATION OF, OR ADJUSTING A CLAIM FOR ANY BENEFIT OR PAYMENT UNDER
21 THE WORKERS' COMPENSATION LAW FOR THE PURPOSE OF AVOIDING PROVISION OF
22 SUCH PAYMENT OR BENEFIT SHALL BE GUILTY OF A CLASS E FELONY.
23 3. A PERSON WHO KNOWINGLY MAKES A FALSE STATEMENT OR REPRESENTATION AS
24 TO A MATERIAL FACT FOR THE PURPOSE OF OBTAINING, MAINTAINING OR RENEWING
25 INSURANCE UNDER THIS CHAPTER, WHETHER FOR HIMSELF OR HERSELF OR FOR ANY
26 OTHER PERSON OR ENTITY OR FOR THE PURPOSE OF EVADING THE REQUIREMENTS OF

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

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SECTION FIFTY OF THIS CHAPTER SHALL BE GUILTY OF A CLASS E FELONY. IN ADDITION TO ANY OTHER REMEDY, THE CARRIER PROVIDING INSURANCE SHALL BE ENTITLED TO RESTITUTION OF ANY AMOUNT OBTAINED OR WITHHELD AS A RESULT OF A VIOLATION OF THIS SUBDIVISION.

4. CONSISTENT WITH THE PROVISIONS OF THE CRIMINAL PROCEDURE LAW, IN ANY PROSECUTION ALLEGING A VIOLATION OF SUBDIVISION ONE, TWO OR THREE OF THIS SECTION, OR SECTIONS FIFTY-TWO AND ONE HUNDRED THIRTY-ONE OF THE WORKERS' COMPENSATION LAW, IN WHICH THE ACT OR ACTS ALLEGED MAY ALSO CONSTITUTE A VIOLATION OF THE PENAL OR OTHER LAW, THE PROSECUTING OFFICIAL MAY CHARGE A PERSON PURSUANT TO THE PROVISIONS OF THIS SECTION AND IN THE SAME ACCUSATORY INSTRUMENT WITH A VIOLATION OF SUCH OTHER LAW.

5. A PERSON (A) WHO IS CONVICTED OF A SECOND OR SUBSEQUENT OFFENSE UNDER THIS SECTION WITHIN TEN YEARS OF THE PRIOR CONVICTION, OR (B) WHO VIOLATES ANY PROVISION OF THIS SECTION CONCERNING TWO OR MORE CLAIMANTS, SHALL BE GUILTY OF A CLASS D FELONY.

6. IF FOR THE PURPOSE OF OBTAINING COMPENSATION PURSUANT TO SECTION FIFTEEN OF THE WORKERS' COMPENSATION LAW, OR FOR THE PURPOSE OF INFLUENCING ANY DETERMINATION REGARDING ANY SUCH PAYMENT, A CLAIMANT KNOWINGLY MAKES A FALSE STATEMENT OR REPRESENTATION AS TO A MATERIAL FACT, SUCH PERSON SHALL BE DISQUALIFIED FROM RECEIVING ANY COMPENSATION DIRECTLY ATTRIBUTABLE TO SUCH FALSE STATEMENT OR REPRESENTATION. IN ADDITION, AS DETERMINED BY THE WORKERS' COMPENSATION BOARD, THE CLAIMANT SHALL BE SUBJECT TO A DISQUALIFICATION OR AN ADDITIONAL PENALTY UP TO THE FOREGOING AMOUNT DIRECTLY ATTRIBUTABLE TO THE FALSE STATEMENT OR REPRESENTATION. ANY PENALTY MONIES SHALL BE PAID INTO THE STATE TREASURY.

7. IF WITH THE KNOWLEDGE OF A CLAIMANT, ANOTHER PERSON KNOWINGLY MAKES A FALSE STATEMENT OR REPRESENTATION AS TO A MATERIAL FACT FOR THE PURPOSE OF ASSISTING A CLAIMANT IN EITHER OBTAINING, OR INFLUENCING ANY DETERMINATION REGARDING COMPENSATION PURSUANT TO SECTION FIFTEEN OF THE WORKERS' COMPENSATION LAW, SUCH CLAIMANT MAY BE DISQUALIFIED FROM RECEIVING ANY COMPENSATION DIRECTLY ATTRIBUTABLE TO SUCH FALSE STATEMENT OR REPRESENTATION. IN ADDITION, AS DETERMINED BY THE WORKERS' COMPENSATION BOARD, THE CLAIMANT MAY BE SUBJECT TO A DISQUALIFICATION OR AN ADDITIONAL PENALTY UP TO THE FOREGOING AMOUNT DIRECTLY ATTRIBUTABLE TO THE FALSE STATEMENT OR REPRESENTATION. ANY PENALTY MONIES SHALL BE DEPOSITED TO THE CREDIT OF THE GENERAL FUND OF THE STATE.

8. IF THE WORKERS' COMPENSATION BOARD OR ANY COURT HAVING JURISDICTION OVER PROCEEDINGS IN RESPECT OF ANY CLAIM FOR COMPENSATION DETERMINES THAT THE PROCEEDINGS IN RESPECT OF SUCH CLAIM, INCLUDING ANY APPEALS, HAVE BEEN INSTITUTED OR CONTINUED WITHOUT REASONABLE GROUND:

(I) THE COST OF SUCH PROCEEDINGS SHALL BE ASSESSED AGAINST THE PARTY WHO HAS SO INSTITUTED OR CONTINUED THE PROCEEDINGS, WHICH SHALL BE PAYABLE TO THE BOARD FOR ADMINISTRATIVE EXPENSES PURSUANT TO SECTION ONE HUNDRED FIFTY-ONE OF THE WORKERS' COMPENSATION LAW;

(II) REASONABLE ATTORNEYS' FEES SHALL BE ASSESSED AGAINST AN ATTORNEY OR LICENSED REPRESENTATIVE WHO HAS INSTITUTED OR CONTINUED PROCEEDINGS WITHOUT REASONABLE GROUNDS, WHICH ASSESSMENT SHALL BE PAYABLE TO THE BOARD FOR ADMINISTRATIVE EXPENSES PURSUANT TO SECTION ONE HUNDRED FIFTY-ONE OF THE WORKERS' COMPENSATION LAW. FEES AWARDED UNDER THIS PROVISION MAY NOT BE RECOUPED FROM THE PARTY; AND

(III) SUCH ASSESSMENTS SHALL BE IN ADDITION TO ANY OTHER PENALTY PERMITTED UNDER THE WORKERS' COMPENSATION LAW.

S 2. Section 55 of the volunteer firefighters' benefit law is REPEALED and a new section 55 is added to read as follows:

S 55. FRAUDULENT PRACTICES. 1. ANY PERSON WHO, KNOWINGLY AND WITH INTENT TO DEFRAUD PRESENTS, CAUSES TO BE PRESENTED, OR PREPARES WITH

1 KNOWLEDGE OR BELIEF THAT IT WILL BE PRESENTED TO OR BY AN INSURER OR
2 PURPORTED INSURER, OR ANY AGENT THEREOF, ANY WRITTEN STATEMENT AS PART
3 OF, OR IN SUPPORT OF, AN APPLICATION FOR THE ISSUANCE OF OR THE RATING
4 OF AN INSURANCE POLICY FOR COMPENSATION INSURANCE, OR A CLAIM FOR
5 PAYMENT OR OTHER BENEFIT PURSUANT TO A COMPENSATION POLICY WHICH HE OR
6 SHE KNOWS TO: (I) CONTAIN A FALSE STATEMENT OR REPRESENTATION CONCERNING
7 ANY FACT MATERIAL THERETO; OR (II) OMITTS ANY FACT MATERIAL THERETO,
8 SHALL BE GUILTY OF A CLASS E FELONY. UPON CONVICTION, THE COURT IN ADDI-
9 TION TO ANY OTHER AUTHORIZED SENTENCE, MAY ORDER FORFEITURE OF ALL
10 RIGHTS TO COMPENSATION OR PAYMENTS OF ANY BENEFIT, AND MAY ALSO REQUIRE
11 RESTITUTION OF ANY AMOUNT RECEIVED AS A RESULT OF A VIOLATION OF THIS
12 SUBDIVISION.

13 2. AN EMPLOYER OR CARRIER, OR ANY EMPLOYEE, AGENT, OR PERSON ACTING ON
14 BEHALF OF AN EMPLOYER OR CARRIER, WHO KNOWINGLY MAKES A FALSE STATEMENT
15 OR REPRESENTATION AS TO A MATERIAL FACT IN THE COURSE OF REPORTING,
16 INVESTIGATION OF, OR ADJUSTING A CLAIM FOR ANY BENEFIT OR PAYMENT UNDER
17 THE WORKERS' COMPENSATION LAW FOR THE PURPOSE OF AVOIDING PROVISION OF
18 SUCH PAYMENT OR BENEFIT SHALL BE GUILTY OF A CLASS E FELONY.

19 3. A PERSON WHO KNOWINGLY MAKES A FALSE STATEMENT OR REPRESENTATION AS
20 TO A MATERIAL FACT FOR THE PURPOSE OF OBTAINING, MAINTAINING OR RENEWING
21 INSURANCE UNDER THIS CHAPTER, WHETHER FOR HIMSELF OR HERSELF OR FOR ANY
22 OTHER PERSON OR ENTITY OR FOR THE PURPOSE OF EVADING THE REQUIREMENTS OF
23 SECTION FIFTY OF THIS CHAPTER SHALL BE GUILTY OF A CLASS E FELONY. IN
24 ADDITION TO ANY OTHER REMEDY, THE CARRIER PROVIDING INSURANCE SHALL BE
25 ENTITLED TO RESTITUTION OF ANY AMOUNT OBTAINED OR WITHHELD AS A RESULT
26 OF A VIOLATION OF THIS SUBDIVISION.

27 4. CONSISTENT WITH THE PROVISIONS OF THE CRIMINAL PROCEDURE LAW, IN
28 ANY PROSECUTION ALLEGING A VIOLATION OF SUBDIVISION ONE, TWO OR THREE OF
29 THIS SECTION, OR SECTIONS FIFTY-TWO AND ONE HUNDRED THIRTY-ONE OF THE
30 WORKERS' COMPENSATION LAW, IN WHICH THE ACT OR ACTS ALLEGED MAY ALSO
31 CONSTITUTE A VIOLATION OF THE PENAL OR OTHER LAW, THE PROSECUTING OFFI-
32 CIAL MAY CHARGE A PERSON PURSUANT TO THE PROVISIONS OF THIS SECTION AND
33 IN THE SAME ACCUSATORY INSTRUMENT WITH A VIOLATION OF SUCH OTHER LAW.

34 5. A PERSON (A) WHO IS CONVICTED OF A SECOND OR SUBSEQUENT OFFENSE
35 UNDER THIS SECTION WITHIN TEN YEARS OF THE PRIOR CONVICTION, OR (B) WHO
36 VIOLATES ANY PROVISION OF THIS SECTION CONCERNING TWO OR MORE CLAIMANTS,
37 SHALL BE GUILTY OF A CLASS D FELONY.

38 6. IF FOR THE PURPOSE OF OBTAINING COMPENSATION PURSUANT TO SECTION
39 FIFTEEN OF THE WORKERS' COMPENSATION LAW, OR FOR THE PURPOSE OF INFLU-
40 ENCING ANY DETERMINATION REGARDING ANY SUCH PAYMENT, A CLAIMANT KNOWING-
41 LY MAKES A FALSE STATEMENT OR REPRESENTATION AS TO A MATERIAL FACT, SUCH
42 PERSON SHALL BE DISQUALIFIED FROM RECEIVING ANY COMPENSATION DIRECTLY
43 ATTRIBUTABLE TO SUCH FALSE STATEMENT OR REPRESENTATION. IN ADDITION, AS
44 DETERMINED BY THE WORKERS' COMPENSATION BOARD, THE CLAIMANT SHALL BE
45 SUBJECT TO A DISQUALIFICATION OR AN ADDITIONAL PENALTY UP TO THE FOREGO-
46 ING AMOUNT DIRECTLY ATTRIBUTABLE TO THE FALSE STATEMENT OR REPRESENTATION.
47 ANY PENALTY MONIES SHALL BE PAID INTO THE STATE TREASURY.

48 7. IF WITH THE KNOWLEDGE OF A CLAIMANT, ANOTHER PERSON KNOWINGLY MAKES
49 A FALSE STATEMENT OR REPRESENTATION AS TO A MATERIAL FACT FOR THE
50 PURPOSE OF ASSISTING A CLAIMANT IN EITHER OBTAINING, OR INFLUENCING ANY
51 DETERMINATION REGARDING COMPENSATION PURSUANT TO SECTION FIFTEEN OF THE
52 WORKERS' COMPENSATION LAW, SUCH CLAIMANT MAY BE DISQUALIFIED FROM
53 RECEIVING ANY COMPENSATION DIRECTLY ATTRIBUTABLE TO SUCH FALSE STATEMENT
54 OR REPRESENTATION. IN ADDITION, AS DETERMINED BY THE WORKERS' COMPEN-
55 SATION BOARD, THE CLAIMANT MAY BE SUBJECT TO A DISQUALIFICATION OR AN
56 ADDITIONAL PENALTY UP TO THE FOREGOING AMOUNT DIRECTLY ATTRIBUTABLE TO

1 THE FALSE STATEMENT OR REPRESENTATION. ANY PENALTY MONIES SHALL BE
2 DEPOSITED TO THE CREDIT OF THE GENERAL FUND OF THE STATE.

3 8. IF THE WORKERS' COMPENSATION BOARD OR ANY COURT HAVING JURISDICTION
4 OVER PROCEEDINGS IN RESPECT OF ANY CLAIM FOR COMPENSATION DETERMINES
5 THAT THE PROCEEDINGS IN RESPECT OF SUCH CLAIM, INCLUDING ANY APPEALS,
6 HAVE BEEN INSTITUTED OR CONTINUED WITHOUT REASONABLE GROUND: (I) THE
7 COST OF SUCH PROCEEDINGS SHALL BE ASSESSED AGAINST THE PARTY WHO HAS SO
8 INSTITUTED OR CONTINUED THE PROCEEDINGS, WHICH SHALL BE PAYABLE TO THE
9 BOARD FOR ADMINISTRATIVE EXPENSES PURSUANT TO SECTION ONE HUNDRED
10 FIFTY-ONE OF THE WORKERS' COMPENSATION LAW; (II) REASONABLE ATTORNEYS'
11 FEES SHALL BE ASSESSED AGAINST AN ATTORNEY OR LICENSED REPRESENTATIVE
12 WHO HAS INSTITUTED OR CONTINUED PROCEEDINGS WITHOUT REASONABLE GROUNDS,
13 WHICH ASSESSMENT SHALL BE PAYABLE TO THE BOARD FOR ADMINISTRATIVE
14 EXPENSES PURSUANT TO SECTION ONE HUNDRED FIFTY-ONE OF THE WORKERS'
15 COMPENSATION LAW. FEES AWARDED UNDER THIS PROVISION MAY NOT BE RECOUPED
16 FROM THE PARTY; AND (III) SUCH ASSESSMENTS SHALL BE IN ADDITION TO ANY
17 OTHER PENALTY PERMITTED UNDER THE WORKERS' COMPENSATION LAW.

18 S 3. This act shall take effect immediately.