STATE OF NEW YORK

3965

2017-2018 Regular Sessions

IN SENATE

January 31, 2017

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:

Section 1. Section 55 of the volunteer ambulance workers' benefit law is REPEALED and a new section 55 is added to read as follows:

§ 55. Fraudulent practices. 1. Any person who, knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer or purported insurer, or any agent thereof, any written statement as part of, or in support of, an application for the issuance of or the rating of an insurance policy for compensation insurance, or a claim for payment or other benefit pursuant to a compensation policy which he or she knows to: (i) contain a false statement or representation concerning any fact material thereto; or (ii) omits any fact material thereto, shall be guilty of a class E felony. Upon conviction, the court in addition to any other authorized sentence, may order forfeiture of all rights to compensation or payments of any benefit, and may also require restitution of any amount received as a result of a violation of this subdivision.

2. An employer or carrier, or any employee, agent, or person acting on behalf of an employer or carrier, who knowingly makes a false statement or representation as to a material fact in the course of reporting, investigation of, or adjusting a claim for any benefit or payment under the workers' compensation law for the purpose of avoiding provision of such payment or benefit shall be guilty of a class E felony.

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

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3. A person who knowingly makes a false statement or representation as to a material fact for the purpose of obtaining, maintaining or renewing insurance under this chapter, whether for himself or herself or for any other person or entity or for the purpose of evading the requirements of 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.

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 Section 55 of the volunteer firefighters' benefit law is REPEALED and a new section 55 is added to read as follows:

§ 55. Fraudulent practices. 1. Any person who, knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer or purported insurer, or any agent thereof, any written statement as part of, or in support of, an application for the issuance of or the rating of an insurance policy for compensation insurance, or a claim for payment or other benefit pursuant to a compensation policy which he or she knows to: (i) contain a false statement or representation concerning any fact material thereto; or (ii) omits any fact material thereto, shall be guilty of a class E felony. Upon conviction, the court in addition to any other authorized sentence, may order forfeiture of all rights to compensation or payments of any benefit, and may also require restitution of any amount received as a result of a violation of this subdivision.

2. An employer or carrier, or any employee, agent, or person acting on behalf of an employer or carrier, who knowingly makes a false statement or representation as to a material fact in the course of reporting, investigation of, or adjusting a claim for any benefit or payment under the workers' compensation law for the purpose of avoiding provision of such payment or benefit shall be guilty of a class E felony.

3. A person who knowingly makes a false statement or representation as to a material fact for the purpose of obtaining, maintaining or renewing insurance under this chapter, whether for himself or herself or for any other person or entity or for the purpose of evading the requirements of 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.

§ 3. This act shall take effect immediately.