STATE OF NEW YORK

9149

IN SENATE

May 11, 2022

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to enacting the justice for injured workers act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known as the "justice for injured workers act".

§ 2. The workers' compensation law is amended by adding a new section 118-a to read as follows:

§ 118-a. Effect of findings and determinations in subsequent proceedings. With respect to an action for a workers' compensation claim permissible under this chapter, no finding or decision by the workers' compensation board, judge or other arbiter shall be given collateral estoppel effect in any other action or proceeding arising out of the same occurrence, other than the determination of the existence of an employer employee relationship.

§ 3. Section 11 of the workers' compensation law, as amended by chapter 635 of the laws of 1996, the opening paragraph as amended by section 8 of part SS of chapter 59 of the laws of 2017, the fifth undesignated paragraph as added by chapter 49 of the laws of 1999 and the closing paragraph as added by chapter 392 of the laws of 2008, is amended to read as follows:

§ 11. Alternative remedy. **1.** The liability of an employer prescribed by the last preceding section shall be exclusive and in place of any other liability whatsoever, to such employee, his or her personal representatives, spouse, parents, dependents, distributees, or any person otherwise entitled to recover damages, contribution or indemnity, at common law or otherwise, on account of such injury or death or liability arising therefrom, except that if an employer fails to secure the payment of compensation for his or her injured employees and their dependents as provided in section fifty of this chapter, an injured employee, or his or her legal representative in case of death results from the injury, may, at his or her option, elect to claim compensation

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

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under this chapter, or to maintain an action in the courts for damages on account of such injury; and in such an action it shall not be necessary to plead or prove freedom from contributory negligence nor may the defendant plead as a defense that the injury was caused by the negligence of a fellow servant nor that the employee assumed the risk of his or her employment, nor that the injury was due to the contributory negligence of the employee. The liability under this chapter of The New York Jockey Injury Compensation Fund, Inc. created under section two hundred twenty-one of the racing, pari-mutuel wagering and breeding law shall be limited to the provision of workers' compensation coverage to jockeys, apprentice jockeys, exercise persons, and at the election of the New York Jockey Injury Compensation Fund, Inc., with the approval of the New York state gaming commission, employees of licensed trainers or owners licensed under article two or four of the racing, pari-mutuel wagering and breeding law and any statutory penalties resulting from the failure to provide such coverage.

For purposes of this section the terms "indemnity" and "contribution" shall not include a claim or cause of action for contribution or indemnification based upon a provision in a written contract entered into prior to the accident or occurrence by which the employer had expressly agreed to contribution to or indemnification of the claimant or person asserting the cause of action for the type of loss suffered.

An employer shall not be liable for contribution or indemnity to any third person based upon liability for injuries sustained by an employee acting within the scope of his or her employment for such employer unless such third person proves through competent medical evidence that such employee has sustained a "grave injury" which shall mean only one or more of the following: death, permanent and total loss of use or amputation of an arm, leg, hand or foot, loss of multiple fingers, loss of multiple toes, paraplegia or quadriplegia, total and permanent blindness, total and permanent deafness, loss of nose, loss of ear, permanent and severe facial disfigurement, loss of an index finger or an acquired injury to the brain caused by an external physical force resulting in permanent total disability.

For purposes of this section "person" means any individual, firm, company, partnership, corporation, joint venture, joint-stock association, association, trust or legal entity.

The liability under this chapter of the New York black car operators' injury compensation fund, inc. shall be limited to: (i) securing the payment of workers' compensation in accordance with article six-F of the executive law to black car operators, as defined in such article, whose injury arose out of and in the course of providing services for a central dispatch facility, as defined in such article, that is a registered member of such fund, and (ii) any statutory penalty resulting from the failure to secure such payment. The liability under this chapter of a central dispatch facility, as defined in article six-F of the executive law, that is a registered member of the New York black car operators' injury compensation fund, inc. that shall be limited to remaining a registered member in good standing of such fund and any statutory penalty, including loss of immunity provided by this section, resulting from the failure to become or remain a registered member in good standing of such fund, except, however, that such central dispatch facility shall be subject to the provisions of section one hundred thirty-one of this chapter and shall be liable for any payments for which it may become responsible pursuant to such section or pursuant to section fourteen-a of this [~~chapter~~] **article**.

The liability under this chapter of the New York independent livery driver benefit fund, inc. shall be limited to: (i) securing the payment of workers' compensation coverage to cover those matters required by article six-G of the executive law for independent livery drivers, as defined in such article, whose injury arose out of and in the course of providing covered services for a livery base, as defined in such article, that is a registered member of such fund, and (ii) any statutory penalty resulting from the failure to secure such payment.

2. Determination by the board shall not be given collateral estoppel effect in any other action or proceeding arising out of the same occurrence, other than the determination of the existence of an employer employee relationship.

§ 4. This act shall take effect immediately.