

# 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:

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

3 § 2. The workers' compensation law is amended by adding a new section  
4 118-a to read as follows:

5 § 118-a. Effect of findings and determinations in subsequent  
6 proceedings. With respect to an action for a workers' compensation claim  
7 permissible under this chapter, no finding or decision by the workers'  
8 compensation board, judge or other arbiter shall be given collateral  
9 estoppel effect in any other action or proceeding arising out of the  
10 same occurrence, other than the determination of the existence of an  
11 employer employee relationship.

12 § 3. Section 11 of the workers' compensation law, as amended by chap-  
13 ter 635 of the laws of 1996, the opening paragraph as amended by section  
14 8 of part SS of chapter 59 of the laws of 2017, the fifth undesignated  
15 paragraph as added by chapter 49 of the laws of 1999 and the closing  
16 paragraph as added by chapter 392 of the laws of 2008, is amended to  
17 read as follows:

18 § 11. Alternative remedy. 1. The liability of an employer prescribed  
19 by the last preceding section shall be exclusive and in place of any  
20 other liability whatsoever, to such employee, his or her personal repre-  
21 sentatives, spouse, parents, dependents, distributees, or any person  
22 otherwise entitled to recover damages, contribution or indemnity, at  
23 common law or otherwise, on account of such injury or death or liability  
24 arising therefrom, except that if an employer fails to secure the  
25 payment of compensation for his or her injured employees and their  
26 dependents as provided in section fifty of this chapter, an injured  
27 employee, or his or her legal representative in case of death results  
28 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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1 under this chapter, or to maintain an action in the courts for damages  
2 on account of such injury; and in such an action it shall not be neces-  
3 sary to plead or prove freedom from contributory negligence nor may the  
4 defendant plead as a defense that the injury was caused by the negli-  
5 gence of a fellow servant nor that the employee assumed the risk of his  
6 or her employment, nor that the injury was due to the contributory  
7 negligence of the employee. The liability under this chapter of The New  
8 York Jockey Injury Compensation Fund, Inc. created under section two  
9 hundred twenty-one of the racing, pari-mutuel wagering and breeding law  
10 shall be limited to the provision of workers' compensation coverage to  
11 jockeys, apprentice jockeys, exercise persons, and at the election of  
12 the New York Jockey Injury Compensation Fund, Inc., with the approval of  
13 the New York state gaming commission, employees of licensed trainers or  
14 owners licensed under article two or four of the racing, pari-mutuel  
15 wagering and breeding law and any statutory penalties resulting from the  
16 failure to provide such coverage.

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

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

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

38 The liability under this chapter of the New York black car operators'  
39 injury compensation fund, inc. shall be limited to: (i) securing the  
40 payment of workers' compensation in accordance with article six-F of the  
41 executive law to black car operators, as defined in such article, whose  
42 injury arose out of and in the course of providing services for a  
43 central dispatch facility, as defined in such article, that is a regis-  
44 tered member of such fund, and (ii) any statutory penalty resulting from  
45 the failure to secure such payment. The liability under this chapter of  
46 a central dispatch facility, as defined in article six-F of the execu-  
47 tive law, that is a registered member of the New York black car opera-  
48 tors' injury compensation fund, inc. that shall be limited to remaining  
49 a registered member in good standing of such fund and any statutory  
50 penalty, including loss of immunity provided by this section, resulting  
51 from the failure to become or remain a registered member in good stand-  
52 ing of such fund, except, however, that such central dispatch facility  
53 shall be subject to the provisions of section one hundred thirty-one of  
54 this chapter and shall be liable for any payments for which it may  
55 become responsible pursuant to such section or pursuant to section four-  
56 teen-a of this ~~chapter~~ article.

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

9 2. Determination by the board shall not be given collateral estoppel  
10 effect in any other action or proceeding arising out of the same occur-  
11 rence, other than the determination of the existence of an employer  
12 employee relationship.

13 § 4. This act shall take effect immediately.