STATE OF NEW YORK

52

2023-2024 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 4, 2023

Introduced by M. of A. MAGNARELLI -- read once and referred to the Committee on Labor

AN ACT to amend the general municipal law, the workers' compensation law, the insurance law, the volunteer firefighters' benefit law, and the volunteer ambulance workers' benefit law, in relation to participation in a public group self-insurer

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

Section 1. Paragraph b of subdivision 2 of section 119-o of the general municipal law, as amended by chapter 681 of the laws of 1961, is amended to read as follows:

b. The manner of employing, engaging, compensating, transferring or discharging necessary personnel, subject, however, to the provisions of the civil service law where applicable; the making of employer's contributions for retirement, social security, health insurance, workmen's compensation**, volunteer firefighter and volunteer ambulance worker benefits, including participation in a public group self-insurer,** and other similar benefits; the approval of attendances at conventions, conferences and schools for public officials and the approval and payment of travel and other expenses incurred in the performance of official duties; the bonding of designated officers and employees; the filing of oaths of office and resignations consistent with general laws applicable thereto; provisions that for specific purposes designated officers or employees of the joint service or a joint water, sewage or drainage project shall be deemed those of a specified participating corporation or district; and provisions that personnel assigned to a joint service or a joint water, sewage or drainage project shall possess the same powers, duties, immunities and privileges they would ordinarily possess (1) if they performed their duties only in the corporation or district by which they are employed or (2) if they were employed by the

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

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corporation or district in which they are required to perform their duties.

§ 2. Paragraph 1, subparagraphs (a), (b) and (h) of paragraph 2, subparagraph (a) and item e of subparagraph (d) of paragraph 5 and subparagraph (a) of paragraph 6 of subdivision 3-a of section 50 of the workers' compensation law, paragraph 1, subparagraph (a) and item e of subparagraph (d) of paragraph 5 and subparagraph (a) of paragraph 6 as amended by chapter 139 of the laws of 2008, subparagraphs (a) and (h) of paragraph 2 as amended by section 4 of part G of chapter 57 of the laws of 2011, and subparagraph (b) of paragraph 2 as amended by section 1-a of subpart E of part NNN of chapter 59 of the laws of 2017, are amended to read as follows:

(1) Definitions. As used in this chapter the term "employers" shall include: (a) employers with related activity in a given industry [~~which shall include municipal corporations as that term is defined in sections two and six-n of the general municipal law,~~] employing persons who perform work in connection with the given industry, (b) an incorporated or unincorporated association or associations consisting exclusively of such employers provided they employ persons who perform such related work in the given industry, and (c) a combination of employers as described in subparagraph (a) hereof and an association or associations of employers as described in subparagraph (b) hereof.

(a) Any group consisting exclusively of such employers may adopt a plan for self-insurance, as a group, for the payment of compensation under this chapter to their employees, except that no new groups may adopt such a plan, and no group not composed solely of public entities set forth in [~~paragraph a of~~] subdivision [~~four~~] **three-f** of this section may insure any liabilities for any employers on and after January first, two thousand twelve, except as provided for in paragraph ten of this subdivision. Under such plan the group shall assume the liability of all the employers within the group and pay all compensation for which the said employers are liable under this chapter[~~, except that in the case of municipal corporations as herein defined no proof of financial ability or deposit of securities or cash need be made in compliance with this subdivision~~]. The group qualifying under this subdivision shall be known as a group self-insurer and the employers participating therein and covered thereby shall be known as members.

(b) Where such plan is adopted the group self-insurer**, except a group composed solely of public entities set forth in subdivision three-f of this section,** shall furnish satisfactory proof to the chair of its financial ability to pay such compensation for the members in the industry covered by it, its revenues, their source and assurance of continuance. The chair shall require the deposit with the chair of such securities as may be deemed necessary of the kind prescribed in subdivisions one, two, three, four and five, and subparagraph (a) of paragraph three of subdivision seven of section two hundred thirty-five of the banking law or the deposit of cash or the filing of irrevocable letters of credit issued by a qualified banking institution as defined by rules promulgated by the chair or the filing of a bond of a surety company authorized to transact business in this state, in an amount to be determined to secure its liability to pay the compensation of each employer as above provided. Such surety bond must be approved as to form by the chair. The chair shall require each group self-insurer to provide regular reports no less than annually, which shall include but not be limited to audited financial statements, actuarial opinions and payroll information containing proof that it is fully funded. Such reports shall

also include a contribution year analysis detailing contributions and expenses associated with each specific contribution year. For purposes of this paragraph, proof that a group self-insurer is fully funded shall at a minimum include proof of unrestricted cash and investments permitted by regulation of the chair of at least one hundred percent of the total liabilities, including the estimate presented in the actuarial opinion submitted by the group self-insurer in accordance with this chapter. The chair by regulation, may set further financial standards for group self-insurers. Any group self-insurer that fails to show that it is fully funded shall be deemed underfunded, and must submit a plan for achieving fully funded status which may include a deficit assessment on members of such group self-insurer which shall be subject to approval or modification by the chair. The amount of such under-funding, as measured by the actuarial opinion or assumption of loss policy quotation submitted by the group, shall be considered unfunded claims as set forth in subdivision two of section sixteen hundred eighty-q of the public authorities law as added by section [~~35~~] **thirty-five** of Part GG of chapter [~~57~~] **fifty-seven** of the laws of [~~2013~~] **two thousand thirteen**.

[~~(h) Any member terminating membership in a group self-insurer after less than four years in such group self-insurer, and any member in a group self-insurer that has defaulted, shall be precluded from obtaining prospective coverage from any group self-insurer for a period of at least three years from the effective date of termination.~~]

(a) Each **private** group self-insurer shall**, and each group self-insurer may,** secure the services of a group administrator to be responsible for assisting the group self-insurer in complying with the provisions of this section and the rules and regulations promulgated hereunder, and for coordinating services including but not limited to claims processing, loss control, legal, accounting and actuarial services. No person, firm or corporation shall coordinate such services or otherwise carry out the tasks of a group administrator as provided in this subdivision or in the regulations issued pursuant thereto on behalf of a group self-insurer unless such person shall have obtained from the chair a license authorizing it to act as a group self-insurer administrator, which license may be revoked for good cause. The chair shall promulgate regulations setting forth any additional qualifications for such license, governing the conduct and compensation of group self-insurer administrators, and setting a license fee in an amount not less than five thousand dollars per year for such license for each group self-insurer the administrator administers. Each administrator shall post a bond in the amount of five hundred thousand dollars for each group self-insurer administered or such other amount as may be set by the chair based on the cost and availability of such bond, from which the chair may recover any recoveries or penalties against the administrator under this section. Nothing in this section shall relieve the trustees of a group self-insurer of any fiduciary obligation they hold to the other members of such group self-insurer.

e. the number and amount of rate deviations provided to members during the prior year and whether the recipient of any such deviation was a trustee**, provided that the application of rating factors in a manner consistent with the filed rating plan is not a deviation which must be reported under this subdivision**; and

(a) Group self-insurers must file with the board, as soon as practicable but no later than sixty days prior to the start of the fund year a rating plan which is supported by an actuarial rate study prepared by an independent, qualified actuary that is a fellow or associate of the

casualty actuarial society, that clearly identifies the actuary's indicated rate assumptions therein. The rating plan must apply consistently to all members, and must provide for a common renewal date for all **private** group self-insurer members. The rates filed can be adjusted based on an experience modification calculated for every member in accordance with the experience rating plan promulgated by the workers' compensation rating board. Experience modification formulas must be applied identically to all members. Other rate deviations may be permissible provided a plan has been approved by the board. Such deviations shall not be in excess of ten percent of the actuary's indicated rate unless otherwise approved by the board for a fully funded group self-insurer, and shall in no event result in amounts less than the actuary's overall indicated rate. The chair by regulation may set further rate plan and actuarial reporting standards.

§ 3. Paragraph (g) of subdivision 3-e of section 50 of the workers' compensation law, as added by chapter 729 of the laws of 1993, is amended and a new subdivision 3-f is added to read as follows:

(g) The state insurance fund, any other insurer or any group self-insurer for municipal corporations as defined in subdivision [~~three-a~~] **three-f** of this section may, at its option, offer a deductible in an amount specified in paragraph (c) of this subdivision to any policyholder who is not otherwise eligible for a deductible under this subdivision.

3-f. (1) Any group consisting exclusively of municipal corporations and public corporations as such terms are defined in section sixty-six of the general construction law, county self-insurance plans established under article five of this chapter, boards of cooperative educational services and consortia established by boards of cooperative educational services may adopt a plan for self-insurance, as a group, for the payment of compensation under this chapter to their employees. Such group shall be known as a "public group self-insurer". All other groups established under this section are "private group self-insurers". A county self-insurance plan established under article five of this chapter is not itself a public group self-insurer, and is not itself subject to the requirements of this section, but may join a public group self-insurer and, if it does so, shall assume all of the obligations of its participants to the public group self-insurer. No entity which is not a municipal corporation as defined in section sixty-six of the general construction law, a county self-insurance plan established under article five of this chapter, or a consortium established by a board of cooperative educational services, may join a public group self-insurer unless it may levy taxes or is otherwise directly capable of generating revenue in the event of a funding deficiency within the public group self-insurer, or its obligations are guaranteed by another member which is such a municipal corporation. A public group self-insurer shall comply with all of the requirements of subdivision three-a of this section; including any obligations imposed by such subdivision upon a group administrator, but shall not be required to obtain a license authorizing it to act as a group self-insurer administrator, to pay a license fee or to post a bond. No proof of financial ability to pay the compensation provided for by this chapter or deposit of securities shall be required of a public group self-insurer and, in lieu thereof, the liability of the public group self-insurer's members shall serve as the security required under paragraph two of subdivision three-a of this section. The chair shall implement the provisions of this subdivision by promulgating rules and

regulations, but no such rules and regulations shall be necessary for any provisions of this subdivision to be effective.

(2) A public group self-insurer as defined in paragraph one of this subdivision may offer, as part of the agreement or by endorsement, deductibles optional to the member for benefits payable under the agreement, upon a determination by the chair that the plan is supported by an actuarial analysis prepared by an independent, qualified actuary who is a member of the casualty actuarial society that clearly identifies the actuary's indicated deductible credit and rate assumptions, and subject to underwriting by the public group self-insurer, consistent with the following standards or factors:

(a) claimants' rights are properly protected and claimants' benefits are paid without regard to any such deductible;

(b) appropriate premium reductions reflect the type and level of any deductible approved by the chairman and selected by the member;

(c) premium reductions for deductibles are determined before application of any experience modification, premium surcharge, or premium discount;

(d) recognition is given to member characteristics, including size, financial capabilities, nature of activities, and number of employees;

(e) if the member selects a deductible, the member is liable to the public group self-insurer for the deductible amount in regard to benefits paid for compensable claims;

(f) the public group self-insurer pays all of the deductible amount, applicable to a compensable claim, to the person or provider entitled to benefits and requires the member to pay to it in advance an amount actuarially determined to be sufficient to pay the portion of the compensation claim that is within the deductible amount as those payments become due; provided that such periodic payments shall be paid to the public group self-insurer in intervals of no greater of six months; and

(g) failure to reimburse deductible amounts by the member to the public group self-insurer is treated under the coverage agreement in the same manner as nonpayment of contributions.

(3) Whenever the chair determines that a public group self-insurer has become insolvent or that the compensation and benefits provided by this chapter may be unpaid by reason of the default of a public group self-insurer, the chair shall pay such compensation and benefits from administration expenses as provided in section one hundred fifty-one of this chapter upon audit and warrant of the comptroller and upon vouchers approved by the chair, which payments shall be considered expenses of administration. As used in this paragraph, insolvent means the value of the public group self-insurer's assets is less than the total costs of the workers' compensation liabilities that it is anticipated the public group self-insurer is required to pay within the succeeding six months. Upon the insolvency of a public group self-insurer, each member shall assume responsibility for the claims against it. The chair shall be reimbursed for any payment made under this paragraph first by the public group self-insurer itself and if the public group self-insurer is unable to fully reimburse the chair for payments made by the chair then second by the member of the public group self-insurer against which the claim is asserted. If the chair is unable to obtain reimbursement from that member, the chair make seek reimbursement from any other member of the public group self-insurer. Any member which reimburses the chair for payments made under this paragraph with respect to claims against any other member may recover those payments from the member whose claims were paid by the chair. Nothing herein shall preclude the chair from

directing that an underfunded public group self-insurer levy an assessment on its members as part of a plan implemented pursuant to subparagraph (b) of paragraph two of subdivision three-a of this section.

§ 4. The opening paragraph of section 3443 of the insurance law, as added by chapter 924 of the laws of 1990, is amended to read as follows:

An insurer issuing a workers' compensation and employers' liability insurance policy, [~~and a group self-insurer for municipal corporations as defined in subdivision three-a of section fifty of the workers' compensation law,~~] may offer, as part of the policy or by endorsement, deductibles optional to the policyholder for benefits payable under the policy, subject to approval by the superintendent and subject to underwriting by the insurer, consistent with the following standards or factors:

§ 5. Subdivision 9 of section 30 of the volunteer firefighters' benefit law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

9. Insurance authorized to be purchased pursuant to subdivision eight of this section may be secured from the state fund or any stock corporation, mutual corporation or reciprocal insurer authorized to transact the business of workers' compensation in this state. If such insurance is not secured, the political subdivision liable shall be deemed to have elected to be a self-insurer unless it is a participant in a county plan of self-insurance or its liability for benefits under this chapter is covered by a town's participation in a county plan of self-insurance as provided in subdivision three of section sixty-three of the workers' compensation law**, or is a participant in a group self-insurance plan consisting solely of municipal corporations as provided in subdivision three-f of section fifty of the workers' compensation law**. Every such self-insurer shall file with the chair of the workers' compensation board a notice of such election prescribed in form by such chair. For failure to file such notice within ten days after such election is made, the treasurer or other fiscal officer of such political subdivision shall be liable to pay to the chair of the workers' compensation board the sum of one hundred dollars as a penalty, to be transferred to the state treasury. A notice of election to be a self-insurer for compensation and benefits to volunteer firefighters under the provisions of the workers' compensation law and the general municipal law in effect prior to March first, nineteen hundred fifty-seven, which was filed prior to such date pursuant to the provisions of subdivision four of section fifty of the workers' compensation law as in effect prior to such date shall be deemed to be a notice of election filed under this section unless the chair of the workers' compensation board is notified to the contrary. The provisions of subdivision five of section fifty of the workers' compensation law shall be applicable to such self-insurers.

§ 6. Subdivision 8 of section 30 of the volunteer ambulance workers' benefit law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

8. Insurance authorized to be purchased pursuant to subdivision seven of this section may be secured from the state fund or any stock corporation, mutual corporation, group self-insurers or reciprocal insurer authorized to transact the business of workers' compensation in this state. If such insurance is not secured, the political subdivision liable shall be deemed to have elected to be a self-insurer unless it is a participant in a county plan of self-insurance or its liability for benefits under this chapter is covered by a town's participation in a county plan of self-insurance as provided in subdivision nine of section

sixty-three of the workers' compensation law**, or is a participant in a group-insurance plan consisting solely of municipal corporations as provided in subdivision three-f of section fifty of the workers' compensation law**. Every such self-insurer shall file with the chair of the workers' compensation board a notice of such election prescribed in form by such chair. For failure to file such notice within ten days after such election is made, the treasurer or other fiscal officer of such political subdivision shall be liable to pay to the chair of the workers' compensation board the sum of one hundred dollars as a penalty, to be transferred to the state treasury. A notice of election to be a self-insurer for compensation and benefits to volunteer ambulance workers under the provisions of the workers' compensation law and the general municipal law in effect prior to March first, in the year of enactment of this chapter, which was filed prior to such date pursuant to the provisions of subdivision four of section fifty of the workers' compensation law as in effect prior to such date shall be deemed to be a notice of election filed under this section unless the chair of the workers' compensation board is notified to the contrary. The provisions of subdivision five of section fifty of the workers' compensation law shall be applicable to such self-insurers.

§ 7. This act shall take effect January 1, 2025; provided however, that subdivision 3-f of section 50 of the workers' compensation law, as added by section three of this act, shall take effect immediately.