

# STATE OF NEW YORK

52--B

2023-2024 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 4, 2023

Introduced by M. of A. MAGNARELLI, SILLITTI, JEAN-PIERRE, SHIMSKY, LEVENBERG, EACHUS -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, the workers' compensation law, the volunteer firefighters' benefit law, the volunteer ambulance workers' benefit law, and the general municipal law, in relation to deductibles offered by public group self-insurers

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

1 Section 1. The opening paragraph of section 3443 of the insurance law,  
2 as added by chapter 924 of the laws of 1990, is amended to read as  
3 follows:

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

12 § 2. Subparagraph (a) of paragraph 2 of subdivision 3-a of section 50  
13 of the workers' compensation law, as amended by section 4 of part G of  
14 chapter 57 of the laws of 2011, is amended and a new subparagraph (a-1)  
15 is added to read as follows:

16 (a) Any group consisting exclusively of such employers may adopt a  
17 plan for self-insurance, as a group, for the payment of compensation  
18 under this chapter to their employees, except that no new groups may

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

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1 adopt such a plan, and no group not composed solely of public entities  
2 set forth in subparagraph (a-1) of this paragraph [~~a of subdivision four~~  
3 ~~of this section~~] may insure any liabilities for any employers on and  
4 after January first, two thousand twelve, except as provided for in  
5 paragraph ten of this subdivision. Under such plan the group shall  
6 assume the liability of all the employers within the group and pay all  
7 compensation for which the said employers are liable under this chapter,  
8 except that in the case of [~~municipal corporations~~] public group self-  
9 insurers as [~~herein~~] defined in subparagraph (a-1) of this paragraph no  
10 proof of financial ability or deposit of securities or cash need be made  
11 in compliance with this subdivision. The group qualifying under this  
12 subdivision shall be known as a group self-insurer and the employers  
13 participating therein and covered thereby shall be known as members.

14 (a-1) Any group consisting exclusively of public corporations as  
15 defined in section sixty-six of the general construction law, county  
16 self-insurance plans established under article five of this chapter,  
17 boards of cooperative educational services and consortia established by  
18 boards of cooperative educational services, and any other entity defined  
19 as a public entity under paragraph fifty-one of subsection (a) of  
20 section one hundred seven of the insurance law except the state of New  
21 York, may adopt a plan for self-insurance, as a group, for the payment  
22 of compensation under this chapter to their employees. Such a group  
23 shall be known as a "public group self-insurer". A county self-insurance  
24 plan established under article five of this chapter is not itself a  
25 public group self-insurer and is not itself subject to the requirements  
26 of this section, but may join a public group self-insurer and, if it  
27 does so, shall assume all of the obligations of its participants to the  
28 public group self-insurer. A public group self-insurer shall comply  
29 with all of the requirements of this subdivision, including any obli-  
30 gations imposed upon a group administrator, but is not required to  
31 secure the services of a group administrator or obtain a license author-  
32 izing it to act as a group self-insurer administrator, to furnish satis-  
33 factory proof to the chair of its financial ability to pay compen-  
34 sation from its revenues, their source and assurance of continuance,  
35 to pay a license fee, or to deposit securities, post a bond or provide  
36 other security, except as specifically provided in this subdivision.

37 § 3. Subdivision 3-a of section 50 of the workers' compensation law is  
38 amended by adding a new paragraph 3-a to read as follows:

39 (3-a) If the chair determines that a public group self-insurer has  
40 become insolvent, the chair shall pay the compensation and benefits that  
41 would otherwise have been required to be paid by the members of the  
42 public group self-insurer from administration expenses as provided in  
43 section one hundred fifty-one of this chapter upon audit and warrant of  
44 the comptroller and upon vouchers approved by the chair, which payments  
45 shall be considered expenses of administration. For purposes of this  
46 paragraph, a public group self-insurer is insolvent when the value of  
47 the public group self-insurer's assets is less than the total costs of  
48 the workers' compensation liabilities that it is anticipated the public  
49 group self-insurer will be required to pay within the succeeding six  
50 months or that the compensation and benefits provided by this chapter  
51 may be unpaid by reason of the default of a public group self-insurer.  
52 Upon the insolvency of a public group self-insurer, each member shall  
53 assume responsibility for the continued administration and payment of  
54 all claims against it, provided however that the public group self-in-  
55 surer shall, within thirty days, turn its assets over to the chair and  
56 the chair shall assume the administration and cost of the claims of the

1 public group self-insurer for a period not to exceed one year. During  
2 the period of chair administration of claims, each member of the public  
3 group self-insurer shall secure the services of a licensed claims admin-  
4 istrator and the chair shall segregate the claims obligations of the  
5 insolvent public group self-insurer by member, and, if necessary segre-  
6 gate an adequate claim reserve for any claims of defunct or insolvent  
7 members of the insolvent public group self-insurer. Not later than one  
8 year from the assumption of the administration of the claims of the  
9 public group self-insurer, each member of the insolvent public group  
10 self-insurer shall resume administration of its own claims and the chair  
11 shall return to each member whatever pro rata share of the public group  
12 self-insurer's assets remain after the period of chair administration.  
13 The chair shall be reimbursed for any payment made under this paragraph  
14 by the public group self-insurer itself and, if the public group self-  
15 insurer is unable to reimburse the chair fully for payments made by the  
16 chair, then by the member of the public group self-insurer against which  
17 the claim is asserted. Further, nothing herein shall preclude the chair  
18 from directing that an underfunded public group self-insurer levy an  
19 assessment on its members as part of a plan for achieving fully funded  
20 status which may include a deficit assessment on members of such group  
21 self-insurer which shall be subject to approval or modification by the  
22 chair. No member shall be liable for any obligations of the public group  
23 self-insurer or any obligations of any member of the public group self-  
24 insurer. The chair shall require any member that has pending claims but  
25 has failed to secure the services of a licensed claims administrator to  
26 resume administration of the claims to pay to the chair any expenses the  
27 chair incurs in administering and paying those claims.

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

31 (g) The state insurance fund[~~7~~] ~~and any other insurer [or any group~~  
32 ~~self-insurer for municipal corporations as defined in subdivision~~  
33 ~~three-a of this section]~~ may, at its option, offer a deductible in an  
34 amount specified in paragraph (c) of this subdivision to any policyhold-  
35 er who is not otherwise eligible for a deductible under this subdivi-  
36 sion. A public group self-insurer may offer a deductible in accordance  
37 with paragraph (h) of this subdivision.

38 (h) A public group self-insurer which has been providing workers'  
39 compensation and employers' liability coverage for not less than five  
40 years and is operated as a self-administered not-for-profit corporation  
41 governed by a board not less than two-thirds of the members of which are  
42 representatives of members of the public group self-insurer, and all of  
43 the officers of which are representatives of members of the public group  
44 self-insurer may, upon a determination by the chair that the methodology  
45 used by the public group self-insurer in creating its deductible rating  
46 plan is supported by an actuarial analysis prepared by an independent,  
47 qualified actuary who is a member of the casualty actuarial society that  
48 clearly identifies the actuary's rate assumptions, and subject to under-  
49 writing by the public group self-insurer, offer as part of the policy or  
50 by endorsement, deductibles optional to the member, not subject to the  
51 foregoing monetary limits, consistent with the following:

52 (1) claimants' rights are properly protected, and claimants' benefits  
53 are paid without regard to any such deductible;

54 (2) appropriate premium reductions reflect the type and level of any  
55 deductible approved by the chair and selected by the member;

1 (3) premium reductions for deductibles are determined before applica-  
2 tion of any experience modification, premium surcharge, or premium  
3 discount;

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

6 (5) if the member selects a deductible, the member is liable to the  
7 public group self-insurer for the deductible amount in regard to bene-  
8 fits paid for compensable claims;

9 (6) the public group self-insurer pays all of the deductible amount,  
10 applicable to a compensable claim, to the person or provider entitled to  
11 benefits and then seeks reimbursement from the member for the applicable  
12 deductible amount;

13 (7) a failure by the member to reimburse deductible amounts to the  
14 public group self-insurer is treated in the same manner as nonpayment of  
15 the member's contribution;

16 (8) the public group self-insurer shall be fully-funded as defined in  
17 subparagraph (b) of paragraph two of subdivision three-a of this section  
18 and if, after offering deductible policies, the public group self-insur-  
19 er ceases to be fully funded as so defined, the public group self-insur-  
20 er may not permit any new member to elect the deductible option until  
21 the public group self-insurer becomes fully funded;

22 (9) the public group self-insurer may add no more than seven new  
23 deductible members in any one contribution year;

24 (10) the aggregate contributions for all new members selecting the  
25 deductible option in any one year may not exceed ten percent of the  
26 total contributions of all of the public group self-insurer's members  
27 for the immediately prior year;

28 (11) if the member was self-insured prior to joining the public group  
29 self-insurer, the member's deductible amount during the member's first  
30 year of membership in the public group self-insurer may not exceed the  
31 amount of the member's reinsurance retention level immediately before  
32 joining the public group self-insurer;

33 (12) each member which has elected the deductible option shall: (i)  
34 maintain in a dedicated account held by the public group self-insurer an  
35 amount actuarially determined to be sufficient to pay the portion of  
36 each compensation claim that is within the deductible amount for the  
37 succeeding three months; and (ii) maintain in its own dedicated reserve  
38 account or in its own undesignated fund balance, the actuarially-deter-  
39 mined amount that the member will be required to pay for all of the  
40 member's claims below the deductible amount; and

41 (13) the public group self-insurer shall provide to all members of the  
42 public group self-insurer an annual statement identifying the contrib-  
43 utions provided by and the reserves attributable to the members which  
44 have elected a deductible and must provide to each member of the public  
45 group self-insurer which has elected the deductible option an annual  
46 actuarial analysis of the member's open claims, stating the amounts the  
47 public group self-insurer anticipates that the member will be required  
48 to pay for the life of each claim.

49 § 5. Section 70 of the workers' compensation law, as added by chapter  
50 849 of the laws of 1955, is amended to read as follows:

51 § 70. Excess or catastrophe insurance; public group self-insurance  
52 plans. 1. The committee or administrator, subject to the approval of  
53 the board of supervisors, may on behalf of the plan purchase excess or  
54 catastrophe insurance. The cost of such insurance shall be an adminis-  
55 trative expense of the plan.

2. The committee or administrator, subject to the approval of the board of supervisors, may on behalf of the plan join a public group self-insurer established under subdivision three-a of section fifty of this chapter. Notwithstanding any other provision of this chapter, when the committee or administrator contracts on behalf of the plan to join a public group self-insurer:

a. the public group self-insurer, the county and each participant shall remain liable in the manner provided in the plan for claims made prior to the date on which the plan joins the public group self-insurer; and

b. the committee or administrator shall establish, before the plan joins the public group self-insurer, a method, which may be amended annually thereafter, by which to apportion among the participants in the plan the cost of its membership in the public group self-insurer and all claims made after the date on which the plan joins the public group self-insurer, and each participant in the plan shall pay its respective share of the cost to the county treasurer, who shall pay the public group self-insurer on behalf of all plan participants.

§ 6. 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 public group self-insurance plan established under subdivision three-a 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.

§ 7. 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

1 state. If such insurance is not secured, the political subdivision  
2 liable shall be deemed to have elected to be a self-insurer unless it is  
3 a participant in a county plan of self-insurance or its liability for  
4 benefits under this chapter is covered by a town's participation in a  
5 county plan of self-insurance as provided in subdivision nine of section  
6 sixty-three of the workers' compensation law or is a participant in a  
7 public group self-insurance plan established under subdivision three-a  
8 of section fifty of the workers' compensation law. Every such self-in-  
9 surer shall file with the chair of the workers' compensation board a  
10 notice of such election prescribed in form by such chair. For failure to  
11 file such notice within ten days after such election is made, the treas-  
12 urer or other fiscal officer of such political subdivision shall be  
13 liable to pay to the chair of the workers' compensation board the sum of  
14 one hundred dollars as a penalty, to be transferred to the state treas-  
15 ury. A notice of election to be a self-insurer for compensation and  
16 benefits to volunteer ambulance workers under the provisions of the  
17 workers' compensation law and the general municipal law in effect prior  
18 to March first, in the year of enactment of this chapter, which was  
19 filed prior to such date pursuant to the provisions of subdivision four  
20 of section fifty of the workers' compensation law as in effect prior to  
21 such date shall be deemed to be a notice of election filed under this  
22 section unless the chair of the workers' compensation board is notified  
23 to the contrary. The provisions of subdivision five of section fifty of  
24 the workers' compensation law shall be applicable to such self-insurers.  
25 § 8. Paragraph b of subdivision 2 of section 119-o of the general  
26 municipal law, as amended by chapter 681 of the laws of 1961, is amended  
27 to read as follows:

28 b. The manner of employing, engaging, compensating, transferring or  
29 discharging necessary personnel, subject, however, to the provisions of  
30 the civil service law where applicable; the making of employer's  
31 contributions for retirement, social security, health insurance, [~~work-~~  
32 ~~men's~~] workers' compensation, volunteer firefighter and volunteer ambu-  
33 lance worker benefits, including participation in a public group self-  
34 insurer, and other similar benefits; the approval of attendances at  
35 conventions, conferences and schools for public officials and the  
36 approval and payment of travel and other expenses incurred in the  
37 performance of official duties; the bonding of designated officers and  
38 employees; the filing of oaths of office and resignations consistent  
39 with general laws applicable thereto; provisions that for specific  
40 purposes designated officers or employees of the joint service or a  
41 joint water, sewage or drainage project shall be deemed those of a spec-  
42 ified participating corporation or district; and provisions that person-  
43 nel assigned to a joint service or a joint water, sewage or drainage  
44 project shall possess the same powers, duties, immunities and privileges  
45 they would ordinarily possess (1) if they performed their duties only in  
46 the corporation or district by which they are employed or (2) if they  
47 were employed by the corporation or district in which they are required  
48 to perform their duties.

49 § 9. This act shall take effect immediately.