STATE OF NEW YORK

8387

2025-2026 Regular Sessions

IN SENATE

June 6, 2025

Introduced by Sen. RAMOS -- (at request of the Workers Compensation Board) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the workers' compensation law, in relation to authorizing certain penalties to be assessed against members of limited liability companies and partners of limited liability partnerships and partnerships

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

Section 1. Section 26-a of the workers' compensation law, as added by chapter 578 of the laws of 1959, subdivisions 1, 2, 6, and 7-a as amended by chapter 316 of the laws of 1991, paragraphs (a) and (f) of subdivision 2 as amended by chapter 139 of the laws of 2008, paragraph (b) of subdivision 2 as amended by chapter 6 of the laws of 2007, subdivision 3 as amended by chapter 395 of the laws of 1964, the opening paragraph of subdivision 3 as amended by chapter 236 of the laws of 2005, the closing paragraph of subdivision 3 as further amended by section 104 of part A of chapter 62 of the laws of 2011, subdivision 5 as amended by chapter 419 of the laws of 1961, subdivision 6-a as added by chapter 717 of the laws of 2021, the opening paragraph and paragraph (a) of subdivision 6-a as amended by chapter 35 of the laws of 2022, subdivision 8 as amended by chapter 276 of the laws of 1962, subdivision 12 as added by chapter 135 of the laws of 1969, subdivision 13 as added by chapter 323 of the laws of 1980, and subdivision 14 as added by chapter 858 of the laws of 1985, is amended to read as follows:

§ 26-a. Procedure and payment of compensation in claims against uninsured defaulting employers. 1. (a) Notwithstanding any other provision of this chapter, when a claim for compensation is filed by an employee, or in case of death by the employee's dependents, and the employer has failed to secure the payment of compensation in accordance with section fifty of this chapter, to make deposit of security in accordance with

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

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section twenty-six of this [~~chapter~~] **article** and to make payment of compensation into the fund created under this section according to the terms of any award including, without limitation, awards made pursuant to subdivision five of section thirteen-g, subdivision two of section thirteen-f, subdivision five of section thirteen-k, subdivision five of section thirteen-l and subdivision six of section thirteen-m of this article, payment of the award shall be promptly made from the fund created under this section in accordance with the terms thereof and the provisions of subdivision three of this section. The employer shall be liable with the fund for payment of the award. Where the employer is a corporation**, limited liability company, limited liability partnership or partnership,** the president, secretary [~~and~~]**,** treasurer**, member and partner** thereof shall also be personally, jointly and severally liable with the corporation**, limited liability company, limited liability partnership or partnership** for payment of the award. The employer shall pay the award into the fund, in accordance with the time limitations contained in section twenty-five of this article.

(b) No such award, however, for any service specified in subdivision five of section thirteen-a of this article requiring advance authorization of the employer in accordance with the provisions of such subdivision, shall be payable from the fund unless advance authorization therefor was secured from the representative of the fund or is determined by the board to be necessary. Notwithstanding any other provision under this section, awards made pursuant to section fourteen-a of this article shall not be the liability of the fund and shall not be payable therefrom nor shall payment of the present value of benefits be required to be paid into the aggregate trust fund pursuant to section twenty-seven of this article in any case in which the uninsured employers' fund is liable.

2. Uninsured employers' fund. (a) There is hereby created a fund which shall be known as the "uninsured employers' fund" to provide for the payment of awards against uninsured employers in accordance with the provisions of this section and shall be available only for the purposes stated in this subdivision, and the assets thereof shall not at any time be appropriated or directed to any other use or purpose, except as set forth in section fifty-a of this chapter.

(b) For the purpose of establishing and maintaining this fund, the board, upon rendering a decision with respect to any claim for compensation under this chapter that the employer liable therefor has failed to secure the payment of compensation with respect thereto in accordance with section fifty of this chapter, shall impose an assessment in the sum of one thousand dollars for each ten day period of non-compliance or a sum not in excess of two times the amount of the cost of compensation for its payroll for the period of such failure against the employer and direct its payment into the fund in connection with each such claim wherein injury shall have occurred on or after the first of May, nineteen hundred fifty-nine, or in death cases where death as the result of injury shall have occurred on or after said date.

(c) If the employer shall fail to pay these assessments into the fund within ten days after date of mailing of notice thereof to [~~him or her~~] **the employer**, such default shall constitute a default in payment of compensation due pursuant to the provisions of section twenty-six of this article and judgment therefor shall be entered in accordance therewith, all other provisions of said section to be deemed applicable with respect thereto, except to the extent that said provisions may be clearly inconsistent with the provisions of this section. All sums collected

from an uninsured employer with respect to any claim for compensation referred to in this section but not payable from the fund, except fines collected from such employer pursuant to section fifty-two of this chapter whether such collection is made prior or subsequent to entry of judgment against such employer, shall be deemed in payment of an applicable first in satisfaction of any compensation and benefits due from such employer with respect to such claim and security demand, if any, in connection therewith and only when such obligations are satisfied in full shall the balance of said sums collected, if any, be deemed payment in satisfaction of and applicable to the assessments above prescribed in this section.

(d) All sums recovered from uninsured employers on judgments entered for failure to pay assessments as hereinbefore provided and for failure to pay compensation and benefits which were paid from the fund herein created, shall upon such recovery be paid into said fund.

(e) All awards made on or after July first, nineteen hundred sixty-nine for every case of injury causing death for which there are no persons entitled to compensation, and where there are persons entitled to compensation but the total amount of such compensation is less than two or five thousand dollars as the case may be exclusive of funeral benefits, pursuant to the provisions of subdivision three of section twenty-five-a of this article shall be paid into the uninsured employers' fund.

(f) As promptly as practicable after July first, nineteen hundred ninety-one and annually thereafter as soon as practicable after January first in each succeeding year, the chair shall ascertain the condition of the uninsured employers' fund. The chair shall transfer to the fund out of the moneys collected pursuant to subdivision two of section one hundred fifty-one of this chapter an amount which will raise the net cash assets of the fund to the level of either the amount spent by the fund in the prior year, or the amount estimated to be expended by the fund in the succeeding year, whichever is greater, except that such requirement shall not apply between August first, two thousand eight and August first, two thousand fifteen to the extent that section fifty-a of this chapter permits the fund to be at a different level.

3. The commissioner of taxation and finance shall be the custodian of the uninsured employers' fund and shall invest any surplus moneys thereof in securities which constitute legal investments for savings banks under the laws of this state and in interest bearing certificates of deposit of a bank or trust company located and authorized to do business in this state or of a national bank located in this state secured by a pledge of direct obligations of the United States or of the state of New York, or in accordance with the provisions of section ninety-eight-a of the state finance law, in an amount equal to the amount of such certificates of deposit, and may sell any of the securities or certificates of deposit in which such fund is invested, if necessary for the proper administration or in the best interest of such fund. Disbursements from such fund as provided by this section shall be paid by the commissioner of taxation and finance upon vouchers signed by the [~~chairman~~] chair.

The commissioner of taxation and finance, as custodian of such fund, as soon as practicable after August first, nineteen hundred sixty-two and annually thereafter, shall furnish to the [~~chairman~~] chair of the board a statement of the fund, setting forth the balance of moneys in the said fund as of the time of the preceding statement, the income of the fund, a summary of payments out of the fund on account of compensation ordered to be paid therefrom by the board, medical and other

expenses, and all other charges against the fund in the interim and setting forth the balance of the fund remaining to its credit as of the end of the period being reported. Such statement shall be open to public inspection in the office of the [~~chairman~~] chair, and a copy thereof shall be transmitted by the [~~chairman~~] chair to the superintendent of financial services. The superintendent of financial services may examine into the condition of such fund at any time on [~~his~~] their own initiative or on request of the [~~chairman~~] chair. [~~He~~] The superintendent of financial services shall verify the receipts and disbursements of the fund, and shall ascertain the liability of the fund upon all cases in which awards of compensation have been made and charged against said fund and shall render a report of such facts to the [~~chairman~~] chair. Such report shall also be open to public inspection in the office of the [~~chairman~~] chair.

4. Upon notice to the representative of the fund, the board, if in its discretion it deems the interests of the fund will be best served thereby, may compromise the amount for which judgment has been entered against an employer pursuant to this section and the judgment entered may be modified accordingly. Such compromise shall be effective without the necessity of obtaining the approval of any other state official thereto, but shall not reduce the amount of benefits payable to or on behalf of any claimant under this section.

5. The [~~chairman~~] chair of the [~~workmen's~~] workers' compensation board shall appoint an employee of the board who is an attorney at law duly admitted to practice in the state of New York to serve as the representative of the fund created under this section and shall assign to assist [~~him~~] such attorney in the discharge of [~~his~~] their duties as such representative under the provisions of this section, such other employees of the board as the [~~chairman~~] chair deems necessary for this purpose. Such representative may apply to the [~~chairman~~] chair for authority to hire such medical and other experts and to defray the expense thereof and of such witnesses as are necessary to a proper defense of the claim within an amount in the discretion of the [~~chairman~~] chair and, if authorized, such amount shall be a charge against said fund. The representative of the fund may appear for and represent the interest of the fund in any case in court involving the rights of the fund against another not in the same employ as the employee who received benefits under this chapter and whose injury or death was caused by the negligence or wrong of such other.

6. Whenever it appears, in a claim for benefits under this chapter, that the employer may have failed to secure the payment of compensation in accordance with section fifty of this chapter, the fund shall be given notice of all proceedings in the claim. In such event, the provisions of this chapter with respect to procedure, the right to be heard and the right to apply to the board for review of a referee's decision and to appeal to the courts shall be reserved to the claimant, to the uninsured employer, and to the fund. Upon the application of the representative of the fund for a modification or rescission or review of an award, the board may review any award, decision or order and, on such review, may affirm, reverse, or modify any decision or award as the law and the facts may require, or take such other action as may be in the interest of justice. An appeal to the appellate division of the supreme court, third department, or to the court of appeals shall not operate as a stay of the payments by the uninsured employer or by the fund of the compensation required by the terms of the award or of the payment of the doctor's bills found to be fair and reasonable. Where such award is

reduced or rescinded upon appeal, the uninsured employer or the fund, whichever made payment, shall be entitled to reimbursement in a sum equal to the compensation in dispute paid by such party to the respondent pending adjudication of the appeal, and, if the claim for workers' compensation is disallowed, to a sum equal to the amount of the doctor's bills paid by such party pending adjudication of the appeal. Such reimbursement shall be paid from administration expenses as provided in section one hundred fifty-one of this chapter upon vouchers approved by the chair. To the extent of any reimbursement to the fund, the uninsured employer shall be entitled to reimbursement from the fund for payments made into the fund in accordance with subdivision one of this section.

6-a. In the event that the board is unable to determine the identity of the responsible insurance carrier for the employer within thirty days of the filing of a new claim, the board shall:

(a) appoint the uninsured employers' fund as the responsible party until such time as the identity of the responsible insurance carrier for the employer is determined. Upon such appointment, the uninsured employers' fund shall immediately commence payments and provide medical care in accordance with the provisions of this chapter;

(b) schedule a hearing to determine the identity of the responsible insurance carrier for the employer and to determine such claim for compensation in accordance with the provisions of subdivision one of this section; and

(c) provide notice of such claim and hearing to the employer by certified mail, return receipt requested, with a direction that the employer provide proof of having insurance in effect as provided by section ten of this article.

7. All the rights, powers, and benefits of the employer under section twenty-nine of this [~~chapter~~] **article** shall become the rights, powers and benefits of the fund in any case in which the fund has paid or is paying compensation to an injured employee or [~~his~~] **their** dependents under this section. If the employer has also paid compensation to or on behalf of the injured employee or [~~his~~] **their** dependents in such case any recovery by the fund pursuant to subdivision one of section twenty-nine shall first be applied to repayment of any awards paid by the fund to or on behalf of the injured employee or [~~his~~] **their** dependents in such case, the balance then applied to any outstanding unsatisfied demand for security in said case and assessments imposed against the employer pursuant to the provisions of this section, the remainder, if any, to be returned to the employer. If the employer has also paid compensation to or on behalf of the injured employee or [~~his~~] **their** dependents in such case, that portion, if any, of a recovery by the fund pursuant to subdivision two of section twenty-nine which is in excess of the total amount of compensation awarded to or on behalf of such injured employee or [~~his~~] **their** dependents and the reasonable and necessary expenditures incurred in effecting such recovery shall be apportioned between the injured employee or [~~his~~] **their** dependents and the fund in the manner provided in said subdivision two. The balance of said recovery shall first be applied to reimburse the fund for its reasonable and necessary expenditures in effecting such recovery and the remainder shall be applied to repayment of any award paid by the fund to or on behalf of the injured employee or [~~his~~] **their** dependents in such case. If there still remains a balance it shall first be applied to the outstanding unsatisfied demand for security, if any, in said case and assessments, if any, imposed against the employer pursuant to the

provisions of this section; the remainder, if any, to be returned to the employer.

7-a. Notwithstanding any other provision of section twenty-nine of this article to the contrary, a compromise by the claimant of [~~his or her~~] their cause of action as set forth in said section twenty-nine of this article, in an amount less than the sum paid to or on behalf of the claimant from the uninsured employers' fund, shall be made only with the written consent of the chair.

8. The provisions of this section with respect to the liability of the uninsured employers' fund to pay awards against uninsured defaulting employers shall apply only to claims wherein the injury shall occur on or after the first day of October, nineteen hundred sixty-two, or wherein death shall occur as the result of an injury sustained on or after the aforesaid first day of October.

9. The [~~chairman~~] chair may make reasonable regulations for the processing and payment of compensation out of the uninsured employers' fund.

10. The liability of the [~~chairman~~] chair, the commissioner of taxation and finance, the fund and the state of New York with respect to payment of any compensation, benefits, expenses, fees or disbursements properly chargeable against the uninsured employers' fund shall be limited to the assets in said fund and they shall not otherwise in any way or manner be liable for the making of any such payment.

11. All assessments payable pursuant to the provisions of this section shall be liens against the assets of the employer liable therefor without limit of amount, subordinate, however, to claims for unpaid wages and prior recorded liens.

12. Whenever the term employer is used in this section it shall be deemed to include without limitation a contractor liable for the payment of compensation pursuant to section fifty-six of [~~the workmen's compensation law~~] this chapter.

13. Notwithstanding any other provision of this chapter, in any case of injury or death to the president, secretary, treasurer or any other officer charged with the obligation of obtaining workers' compensation insurance, of a corporation, any awards of compensation or medical expenses payable to or on behalf of such officer or to [~~his~~] their surviving spouse, children and dependents as defined by section sixteen of this article made against the corporation as an uninsured employer solely because of the injury or death of such officer, shall in no event be the liability of the uninsured employers' fund and shall not be payable therefrom.

14. Notwithstanding any other provision of this chapter, in any case of injury or death to a self-employed person or to a partner of a partnership as defined in section ten of the partnership law, any awards of compensation or medical expenses payable to or on behalf of such self-employed person or partner of a partnership or to [~~his~~] their surviving spouse, children and dependents as defined by section sixteen of this article made against the self-employed person or partnership as an uninsured employer solely because of the injury or death of such self-employed person or partner, shall in no event be the liability of the uninsured employers' fund and shall not be payable therefrom.

15. Notwithstanding any other provision of this chapter, in any case of injury or death to a self-employed person or to a member of a limited liability company as defined in section one hundred two of the limited liability company law, any awards of compensation or medical expenses payable to or on behalf of such self-employed person or member of a limited liability company or to their surviving spouse, children and

dependents as defined by section sixteen of this article made against the self-employed person or limited liability company as an uninsured employer solely because of the injury or death of such self-employed person or member, shall in no event be the liability of the uninsured employers' fund and shall not be payable therefrom.

§ 2. Section 52 of the workers' compensation law, as amended by chapter 6 of the laws of 2007, subdivision 5 as amended by section 19 of part GG of chapter 57 of the laws of 2013, is amended to read as follows:

§ 52. Effect of failure to secure compensation. 1. (a) Failure to secure the payment of compensation for five or less employees within a twelve month period shall constitute a misdemeanor, and is punishable by a fine of not less than one thousand nor more than five thousand dollars. Failure to secure the payment of compensation for more than five employees within a twelve month period shall constitute a class E felony, and is punishable by a fine of not less than five thousand dollars nor more than fifty thousand dollars in addition to any other penalties otherwise provided by law. It shall be an affirmative defense to any criminal prosecution under this section that the employer took reasonable steps to secure compensation.

(b) Where any person has previously been convicted of a failure to secure the payment of compensation within the preceding five years, upon conviction for a subsequent violation such person shall be guilty of a class D felony, and fined not less than ten thousand nor more than fifty thousand dollars in addition to any other penalties including fines otherwise provided by law.

(c) Where the employer is a corporation, limited liability company, limited liability partnership or partnership, the president, secretary [~~and~~], treasurer, members and partners thereof shall be liable for failure to secure the payment of compensation under this section. It shall be an affirmative defense to any action against any officer of a corporation, member of a limited liability company or partners of a limited liability partnership or partnership under this section that the officer, member or partner took reasonable steps to ensure that the corporation, limited liability company, limited liability partnership or partnership secured compensation, that proper internal procedures were in effect to do so, and that proper internal controls existed to monitor compliance with said procedures.

(d) If at any time an employer intentionally and materially understates or conceals payroll, or intentionally and materially misrepresents or conceals employee duties so as to avoid proper classification for calculation of premium paid to secure compensation, or intentionally and materially misrepresents or conceals information pertinent to the calculation of premium paid to secure compensation, such employer shall be deemed to have failed to secure compensation and shall be subject to the sanctions applicable to this section.

(e) A stop-work order issued because an employer is deemed to have failed to secure compensation under section one hundred forty-one-a of this chapter shall have no effect upon an employer's or carrier's duty to provide benefits under this chapter or upon any of the employer's or carrier's rights and defenses.

2. All fines imposed under this chapter, except as herein otherwise provided, shall be paid directly and immediately by the officer, member or partner collecting the same to the [~~chairman~~] chair, and shall be paid by [~~him~~] them into the uninsured employers' fund created under section twenty-six-a of this chapter, provided, however, that all such

fines collected by justices of towns and villages shall be paid to the state comptroller in accordance with the provisions of section twenty-seven of the town law and section 4-410 of the village law respectively.

3. In any prosecution hereunder the failure of the employer to file with the [~~chairman~~] chair, within ten days after demand, a statement subscribed by the employer and affirmed by [~~him~~] them as true under the penalties of perjury showing specifically (a) the name of the stock company, mutual corporation or reciprocal insurer in which such employer is insured and the number and the date of issuance and term of such policy of insurance, or (b) that the said employer is insured with the state fund in which case [~~he~~] they shall give the number of such policy of insurance, the date of issuance and term thereof, or (c) that the said employer has been authorized to do business as a self-insurer pursuant to section fifty of this article, giving the date of said authorization, or (d) a legal reason, if any, why said employer is not required to secure compensation, shall constitute prima facie evidence that the employer has failed to secure compensation as herein required. The statement to be filed herein shall be subscribed by the employer or if the employer is a corporation, limited liability company, limited liability partnership or partnership by one of the officers, members or partners herein named in which [~~he~~] they shall state that [~~he has~~] they have read such statement subscribed by [~~him~~] them and knows the contents thereof and that same is true of [~~his~~] their own knowledge.

4. If, however, there has been an accident and the board shall have made an award against the employer as a non-insured employer, the making of such award, except in a case where the employer had secured compensation insurance which was in effect at the time of the accident but the carrier later became insolvent, shall constitute prima facie evidence of an employment by the employer of an employee in an occupation in which the said employer was required to carry compensation and of the failure of the employer to secure the payment of workers' compensation on the date of the accident involved in said award. A certified copy of such award shall be received as competent evidence of the making thereof in any criminal prosecution hereunder.

5. The chair, upon finding that an employer has failed for a period of not less than ten consecutive days to make the provision for payment of compensation required by section fifty of this article, may impose upon such employer, in addition to all other penalties, fines or assessments provided for in this chapter, a penalty of up to two thousand dollars for each ten day period of non-compliance or a sum not in excess of two times the cost of compensation for its payroll for the period of such failure, which sum shall be paid into the uninsured employers' fund created under section twenty-six-a of this chapter. When an employer fails to provide business records sufficient to enable the chair to determine the employer's payroll for the period requested for the calculation of the penalty provided in this section, the imputed weekly payroll for each employee, corporate officer, sole proprietor, or partner shall be the New York state average weekly wage, multiplied by 1.5. Where the employer is a corporation, limited liability company, limited liability partnership or partnership, the president, secretary [~~and~~], treasurer, member and partner thereof shall be liable for the penalty. If the employer shall within thirty days after notice of the imposition of a penalty by the chair pursuant to this subdivision make an application in affidavit form for a redetermination review of such penalty the chair shall make a decision in writing on the issues raised on such application.

§ 3. Subdivision 3 of section 131 of the workers' compensation law, as amended by chapter 6 of the laws of 2007, is amended to read as follows:

(3) The chair, upon finding that an employer has failed to keep true and accurate records as required by this section, may impose upon such employer, in addition to all other penalties, fines or assessments provided for in this chapter, one thousand dollars for each ten day period of non-compliance or a sum not in excess of two times the cost of compensation for its payroll for the period of such violation, which sum shall be paid into the uninsured employers' fund created under section twenty-six-a of this chapter. When an employer fails to provide business records sufficient to enable the chair to determine the employer's payroll for the period requested for the calculation of the penalty provided in this section, the imputed weekly payroll for each employee, corporate officer, sole proprietor, **member,** or partner shall be the New York state average weekly wage, multiplied by 1.5. Where the employer is a corporation, **limited liability company, limited liability partnership or partnership,** the corporation**, limited liability company, limited liability partnership or partnership** and any of the following shall be liable for the penalty provided in this subdivision: the president, secretary [~~and~~]**,** treasurer**, members and partners, respectively**. If the employer shall within thirty days after notice of the imposition of a penalty by the chair pursuant to this subdivision make an application in affidavit form for a redetermination review of such penalty, the chair shall make a decision in writing on the issues raised on such application.

§ 4. Subdivision 1 of section 220 of the workers' compensation law, as amended by section 18 of part SS of chapter 54 of the laws of 2016, is amended to read as follows:

1. Any employer who fails to make provision for payment of disability or family leave benefits as required by section two hundred eleven of this article within ten days following the date on which such employer becomes a covered employer as defined in section two hundred two of this article shall be guilty of a misdemeanor and upon conviction be punishable by a fine of not less than one hundred nor more than five hundred dollars or imprisonment for not more than one year or both, except that where any person has previously been convicted of a failure to make provisions for payment of disability or family leave benefits within the preceding five years, upon conviction for a second violation such person shall be fined not less than two hundred fifty nor more than one thousand two hundred fifty dollars in addition to any other penalties including fines otherwise provided by law, and upon conviction for a third or subsequent violation such person may be fined up to two thousand five hundred dollars in addition to any other penalties including fines otherwise provided by law. Where the employer is a corporation, **limited liability company, limited liability partnership or partnership,** the president, secretary, treasurer, **member, partner,** or officers exercising corresponding functions, shall each be liable under this section.

§ 5. This act shall take effect immediately.