

S T A T E O F N E W Y O R K

9817

I N A S S E M B L Y

January 22, 2008

Introduced by M. of A. JOHN, MORELLE -- (at request of the Workers Compensation Board) -- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law, the insurance law, the volunteer ambulance workers' benefit law and the volunteer firefighters' benefit law, in relation to rates for workers' compensation insurance and setting forth conditions for a workers' compensation rate service organization; to repeal certain provisions of the insurance law relating to the workers' compensation rating board; and providing for the repeal of certain provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 21 of section 2 of the workers' compensation
2 law, as added by chapter 6 of the laws of 2007, is amended to read as
3 follows:

4 21. The "workers' compensation rating board" or the "New York workers'
5 compensation rating board" shall mean the compensation insurance rating
6 board until February first, two thousand eight, and thereafter {such
7 entity as is designated by law} THE SUPERINTENDENT OF INSURANCE OR OTHER
8 ENTITY DESIGNATED BY THE SUPERINTENDENT OF INSURANCE FOR COLLECTION AND
9 ANALYSIS OF DATA OR SUCH OTHER PURPOSES AS SET FORTH IN THIS CHAPTER.

10 S 2. Paragraph 54 of subsection (a) of section 107 of the insurance
11 law is REPEALED.

12 S 3. Subsection (g) of section 2304 of the insurance law is relettered
13 subsection (i) and two new subsections (g) and (h) are added to read as
14 follows:

15 (G) "LOSS COSTS," FOR THE PURPOSE OF WORKERS' COMPENSATION INSURANCE
16 IN THIS ARTICLE, MEANS THAT PORTION OF A RATE INTENDED TO REPRESENT THE
17 ANTICIPATED COSTS OF CLAIM PAYMENTS AND LOSS ADJUSTMENT EXPENSES ASSOCI-
18 ATED WITH SUCH CLAIM PAYMENTS, AND MAY INCLUDE ONE OR MORE TREND
19 FACTORS. LOSS COSTS DO NOT INCLUDE PROVISIONS FOR EXPENSES (OTHER THAN
20 LOSS ADJUSTMENT EXPENSES) SUCH AS ACQUISITION COSTS, OVERHEAD AND TAXES,
21 OR PROFIT. FOR ALL OTHER PURPOSES, THE SUPERINTENDENT, EXCEPT AS OTHER-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
{ } is old law to be omitted.

LBD14897-03-8

A. 9817

2

1 WISE PROVIDED IN THIS CHAPTER, MAY PROMULGATE REGULATIONS DEFINING LOSS
2 COSTS.

3 (H) A LOSS COST FILING SHALL BE DEEMED TO BE A RATE FILING UNDER THIS
4 ARTICLE.

5 S 4. Subdivision 15 of section 3 of the volunteer ambulance workers'
6 benefit law, as added by chapter 6 of the laws of 2007, is amended to

7 read as follows:

8 15. The "workers' compensation rating board" or the "New York workers' compensation rating board" shall {mean the compensation insurance rating board until February first, two thousand eight, and thereafter such entity as is designated by law} HAVE THE MEANING SET FORTH IN SECTION 12 TWO OF THE WORKERS' COMPENSATION LAW.

13 S 5. Subdivision 17 of section 3 of the volunteer firefighters' benefit law, as added by chapter 6 of the laws of 2007, is amended to read 15 as follows:

16 17. The "workers' compensation rating board" or the "New York workers' compensation rating board" shall {mean the compensation insurance rating board until February first, two thousand eight, and thereafter such entity as is designated by law} HAVE THE MEANING SET FORTH IN SECTION 20 TWO OF THE WORKERS' COMPENSATION LAW.

21 S 6. Paragraph 2 of subsection (e) of section 2304 of the insurance law, as amended by chapter 6 of the laws of 2007, is amended to read as 23 follows:

24 (2) The {base rates} LOSS COSTS applicable to employments classified 25 under sections two hundred twenty, two hundred forty and two hundred 26 forty-one of the labor law, provided such employments are classified 27 under each of said sections, shall be adjusted {by the New York workers' 28 compensation rating board beginning October first, nineteen hundred 29 ninety-nine} to reflect the payroll limitations required by this section 30 as they separately affect such rates for work actually performed within 31 each of the following geographic territories:

32 (A) Territory 1 comprising the counties of the Bronx, Kings, New York, 33 Queens, and Richmond;

34 (B) Territory 2 comprising the counties of Dutchess, Nassau, Orange, 35 Putnam, Rockland, Suffolk and Westchester; and

36 (C) Territory 3 comprising all other counties within the state.

37 S 7. Subsection (e) of section 2305 of the insurance law, as amended 38 by chapter 924 of the laws of 1990, is amended to read as follows:

39 (e) The superintendent: (1) by regulation may, in lieu of the waiting 40 period set forth in subsection (b) {hereof} OF THIS SECTION, require 41 workers' compensation insurance rate filings to be specifically approved 42 before they become effective; and (2) {may hold a public hearing whenever 43 deemed appropriate by the superintendent concerning any rate filing 44 made by the rate service organization for workers' compensation insur- 45 ance, provided that a public hearing shall be held in connection with 46 the filing to be effective, upon the superintendent's approval, July 47 first, nineteen hundred ninety-one} SHALL HOLD A PUBLIC HEARING IF A 48 RATE SERVICE ORGANIZATION MAKES A LOSS COST FILING FOR WORKERS' COMPEN- 49 SATION THAT IS AN INCREASE OF SEVEN PERCENT OR MORE OVER THE APPROVED 50 LOSS COSTS FROM THE PRIOR YEAR. UNTIL JUNE SECOND, TWO THOUSAND THIR- 51 TEEN, A RATE SERVICE ORGANIZATION FOR WORKERS' COMPENSATION SHALL MAKE A 52 LOSS COST FILING EVERY YEAR ON OR BEFORE JUNE FIRST, OR SUCH EARLIER 53 DATE AS IS SET BY THE SUPERINTENDENT.

54 S 8. Subsection (h) of section 2305 of the insurance law is REPEALED.

55 S 9. Subsection (s) of section 2313 of the insurance law, as added by 56 chapter 6 of the laws of 2007, is amended to read as follows:

A. 9817

3

1 (s) Notwithstanding any other provision of this article, no rate 2 service organization may file rates{, rating plans or other statistical 3 information} for workers' compensation insurance after February first, 4 two thousand eight, BUT A RATE SERVICE ORGANIZATION MAY FILE LOSS COSTS 5 OR OTHER STATISTICAL INFORMATION, INCLUDING RATING PLANS, UNTIL JUNE 6 SECOND, TWO THOUSAND THIRTEEN. Notwithstanding subsection (j) of this

7 section, any such rate service organization shall nonetheless be
8 required to be licensed pursuant to this section.

9 S 10. Section 2313 of the insurance law is amended by adding a new
10 subsection (t) to read as follows:

11 (T)(1) THE GOVERNING BODY OF A WORKERS` COMPENSATION RATE SERVICE
12 ORGANIZATION SHALL BE COMPRISED OF NINE VOTING MEMBERS. FOUR MEMBERS
13 SHALL REPRESENT INSURERS AUTHORIZED TO WRITE WORKERS` COMPENSATION
14 INSURANCE IN THIS STATE, AND SHALL BE SELECTED IN SUCH MANNER AS IS
15 DETERMINED BY THE MEMBERS OF THE RATE SERVICE ORGANIZATION. ONE MEMBER
16 OF THE GOVERNING BODY SHALL BE A REPRESENTATIVE OF THE STATE INSURANCE
17 FUND. THE REMAINING FOUR MEMBERS OF THE GOVERNING BODY SHALL SERVE FOR
18 TERMS OF TWO YEARS AND SHALL NOT BE EMPLOYED BY, OR SERVE AS OFFICERS OR
19 DIRECTORS OF, INSURERS AUTHORIZED TO WRITE WORKERS` COMPENSATION INSUR-
20 ANCE IN THIS STATE, OR ANY PARENT, SUBSIDIARY, OR AFFILIATE THEREOF. ONE
21 SUCH MEMBER OF THE GOVERNING BODY SHALL BE APPOINTED BY THE SUPERINTEN-
22 DENT. THE OTHER THREE SUCH MEMBERS SHALL BE APPOINTED SUBJECT TO THE
23 APPROVAL OF THE SUPERINTENDENT BY THE FOLLOWING: (I) THE WORKERS`
24 COMPENSATION BOARD; (II) THE BUSINESS COUNCIL OF NEW YORK STATE, INC.;
25 AND (III) THE AMERICAN FEDERATION OF LABOR - CONGRESS OF INDUSTRIAL
26 ORGANIZATIONS OF NEW YORK STATE. ANY VACANCY ON THE GOVERNING BODY SHALL
27 BE FILLED IN THE SAME MANNER AS THE INITIAL APPOINTMENT. THE GOVERNING
28 BODY SHALL SELECT A CHIEF EXECUTIVE OFFICER WHO SHALL SERVE AT THE PLEA-
29 SURE OF THE GOVERNING BODY AND WHOSE TERMS AND CONDITIONS OF EMPLOYMENT
30 SHALL BE APPROVED BY THE GOVERNING BODY. NO RESTRICTION IN THIS
31 SUBSECTION SHALL APPLY IF COMPLIANCE IS PREVENTED BY THE FAILURE OF ANY
32 APPOINTING AUTHORITY TO MAKE AN APPOINTMENT, OR OF THE SUPERINTENDENT TO
33 APPROVE SUCH APPOINTMENT.

34 (2) THE GOVERNING BODY OF A WORKERS` COMPENSATION RATE SERVICE ORGAN-
35 IZATION SHALL HAVE CHARGE OF THE GENERAL ACTIVITIES OF THE ORGANIZATION,
36 INCLUDING CONTROL AND SUPERVISION OVER ITS FINANCES AND AUTHORITY TO
37 ESTABLISH BUDGETS, APPROVE ASSESSMENTS AND IMPOSE FINES ON MEMBERS OF
38 THE RATE SERVICE ORGANIZATION.

39 (3) A WORKERS` COMPENSATION RATE SERVICE ORGANIZATION SHALL HAVE AN
40 UNDERWRITING COMMITTEE AND A MEDICAL AND CLAIMS COMMITTEE, AND SUCH
41 OTHER COMMITTEES AS THE GOVERNING BODY DEEMS APPROPRIATE. THE UNDER-
42 WRITING COMMITTEE SHALL HAVE THE SAME ALLOCATION OF VOTING MEMBERS AS
43 THE WORKERS` COMPENSATION RATE SERVICE ORGANIZATION GOVERNING BODY, AND
44 IT SHALL BE THE RESPONSIBILITY OF THE UNDERWRITING COMMITTEE TO ADDRESS
45 MATTERS WITH RESPECT TO POLICY FORMS AND ENDORSEMENTS, LOSS COSTS,
46 RATING AND STATISTICAL PLANS, PAYROLL AUDITS AND OTHER EMPLOYER RELATED
47 ISSUES. IT SHALL BE THE RESPONSIBILITY OF THE MEDICAL AND CLAIMS
48 COMMITTEE TO STUDY THE ADMINISTRATION OF CLAIMS UNDER THE WORKERS`
49 COMPENSATION LAW, AND MEDICAL, SURGICAL AND HOSPITAL CARE OF INJURED
50 WORKERS.

51 (4) A WORKERS` COMPENSATION RATE SERVICE ORGANIZATION SHALL HAVE AN
52 ACTUARIAL COMMITTEE. IT SHALL BE THE RESPONSIBILITY OF THE ACTUARIAL
53 COMMITTEE TO REVIEW METHODOLOGY AND DATA COLLECTION PROCESSES USED TO
54 DEVELOP LOSS COSTS. THE AMERICAN FEDERATION OF LABOR - CONGRESS OF
55 INDUSTRIAL ORGANIZATIONS OF NEW YORK STATE AND THE BUSINESS COUNCIL OF
56 NEW YORK STATE, INC. SHALL TOGETHER APPOINT ONE INDEPENDENT CASUALTY

A. 9817

4

1 ACTUARY WHO IS A FELLOW OR ASSOCIATE OF THE CASUALTY ACTUARIAL SOCIETY
2 TO SERVE AS A MEMBER OF THE ACTUARIAL COMMITTEE. THE APPOINTMENT OF
3 SUCH ACTUARY, AND HIS OR HER COMPENSATION AND TERMS AND CONDITIONS OF
4 RETENTION, SHALL BE SUBJECT TO THE APPROVAL OF THE SUPERINTENDENT AS
5 REASONABLE AND CUSTOMARY FOR SUCH PROFESSIONAL. THE ACTUARY SHALL BE
6 PAID BY THE WORKERS` COMPENSATION RATE SERVICE ORGANIZATION. SUCH ACTU-

7 ARY SHALL HAVE THE SAME ACCESS TO THE WORKERS` COMPENSATION RATE SERVICE
8 ORGANIZATION DATA AND DOCUMENTS AS THE OTHER MEMBERS OF THAT COMMITTEE.
9 THE GOVERNING BODY OF A WORKERS` COMPENSATION RATE SERVICE ORGANIZATION
10 SHALL SELECT A CHIEF ACTUARY OF THE ACTUARIAL COMMITTEE, WHO SHALL SERVE
11 AT THE PLEASURE OF THE GOVERNING BODY AND WHOSE TERMS AND CONDITIONS OF
12 EMPLOYMENT SHALL BE APPROVED BY THE GOVERNING BODY.

13 (5) A WORKERS` COMPENSATION RATE SERVICE ORGANIZATION SHALL ASSESS
14 INSURERS THAT WRITE WORKERS` COMPENSATION COVERAGE IN NEW YORK STATE FOR
15 EXPENSES IT INCURS IN ITS OPERATION. NOTHING IN THIS PARAGRAPH SHALL
16 PREVENT A WORKERS` COMPENSATION RATE SERVICE ORGANIZATION FROM ALSO
17 OBTAINING FUNDS FROM ANY OTHER SOURCE.

18 (6) A WORKERS` COMPENSATION RATE SERVICE ORGANIZATION SHALL RETAIN ALL
19 DATA USED TO CALCULATE RATES, CLASS RELATIVITIES, AND EXPERIENCE MODIFI-
20 CATIONS, AS WELL AS ALL DATA UNDERLYING ANY LOSS COST OR OTHER FILING
21 MADE WITH THE DEPARTMENT, AND ANY OTHER DATA THE SUPERINTENDENT MAY
22 DIRECT, FOR SUCH PERIOD OF TIME AS THE SUPERINTENDENT SHALL DIRECT.

23 S 11. Paragraph 2 of subsection (a) of section 2316 of the insurance
24 law, as amended by chapter 6 of the laws of 2007, is amended to read as
25 follows:

26 (2) No insurer or rate service organization shall agree with any other
27 insurer or rate service organization to charge or adhere to any rate,
28 although insurers and rate service organizations{, other than rate
29 service organizations with respect to workers` compensation insurance,}
30 may continue to exchange statistical information.

31 S 12. Subsection (b) of section 2305 of the insurance law, as amended
32 by chapter 113 of the laws of 1995, paragraph 13 as added by chapter 85
33 of the laws of 2003, is amended to read as follows:

34 (b) rate filings for:

35 (1) workers` compensation insurance;

36 (2) motor vehicle insurance, or surety bonds, required by section
37 three hundred seventy of the vehicle and traffic law;

38 (3) joint underwriting;

39 (4) motor vehicle assigned risk insurance;

40 (5) insurance issued by the New York Property Insurance Underwriting
41 Association;

42 (6) risk sharing plans authorized by section two thousand three
43 hundred eighteen of this article;

44 (7) title insurance;

45 (8) medical malpractice liability insurance;

46 (9) insurance issued by the Medical Malpractice Insurance Association;

47 (10) mortgage guaranty insurance;

48 (11) credit property insurance, as defined in section two thousand
49 three hundred forty of this article; and

50 (12) gap insurance

51 (13) Private passenger automobile insurance.

52 shall be filed with the superintendent and shall not become effective
53 unless either the filing has been approved or thirty days, which the
54 superintendent may with cause extend an additional thirty days and with
55 further cause extend an additional fifteen days, have elapsed and the
56 filing has not been disapproved as failing to meet the requirements of

A. 9817

5

1 this article, including the standard that rates be not otherwise unrea-
2 sonable. After a rate filing becomes effective, the filing and support-
3 ing information shall be open to public inspection. If a filing is
4 disapproved, notice of such disapproval order shall be given, specifying
5 in what respects such filing fails to meet the requirements of this
6 article. {The annual rate filing made pursuant to this article with

7 regard to workers' compensation insurance affecting the general rate
8 level shall be subject to at least one public hearing to be convened by
9 the superintendent at least ninety days prior to the effective date of
10 new rates. The superintendent may in his or her discretion determine not
11 to hold a public hearing, but only if the requested rate change is
12 either a decrease or an increase of less than two percent. The super-
13 intendent shall be required to issue a written opinion on such rate
14 filing at least sixty days prior to the effective date of the new rates.
15 The opinion shall include, among other subjects deemed appropriate by
16 the superintendent, a discussion of the profitability of the workers'
17 compensation insurance line, and the profit factor being permitted by
18 the department.} Upon {its} HIS OR HER request, the {department} SUPER-
19 INTENDENT shall be provided with support and assistance from the work-
20 ers' compensation board and other state agencies and departments with
21 appropriate jurisdiction. THE LOSS COST MULTIPLIER FOR EACH INSURER
22 PROVIDING COVERAGE FOR WORKERS' COMPENSATION, AS DEFINED BY REGULATION
23 PROMULGATED BY THE SUPERINTENDENT, SHALL BE PROMPTLY DISPLAYED ON THE
24 DEPARTMENT'S WEBSITE AND UPDATED IN THE EVENT OF ANY CHANGE.

25 S 13. Subsection (d) of section 2339 of the insurance law, as amended
26 by chapter 6 of the laws of 2007, is amended to read as follows:

27 (d) (1) Notwithstanding any other provision of law, the state insur-
28 ance fund shall not charge an insured ANY RATE, or receive from an
29 insured any rate in excess of the {rate promulgated by the workers'
30 compensation rating board which does not constitute} TOTAL OF (I) THE
31 APPLICABLE LOSS COST APPROVED BY THE SUPERINTENDENT, (II) THE APPLICABLE
32 EXPENSE COMPONENT OF THE STATE INSURANCE FUND AND (III) a fair and
33 reasonable differential charge{, giving due regard to} WHICH TAKES INTO
34 CONSIDERATION the nature and hazards of {his} THE INSURED'S business or
35 operations, {his} THE INSURED'S prior loss experience, {his} THE
36 INSURED'S prior and presently existing safety practices, {his} THE
37 INSURED'S prior premium payment history, the number of persons {he} THE
38 INSURED employs in such business or operations and the specific type of
39 work they perform, {his} THE INSURED'S prior and current compliance with
40 obligations imposed upon {him} THE INSURED by the workers' compensation
41 law and other laws which require premium or other payments by {him} THE
42 INSURED on the basis of earnings and other remuneration earned by
43 persons engaged in the furtherance of {his} THE INSURED'S enterprise or
44 enterprises, the promptness and completeness of such reports as {he} THE
45 INSURED has filed on accidents and claims, and such other factors as may
46 be relevant to the appraisal of the insured or proposed insured as a
47 risk in whole.

48 (2) A {premium rate for} DIFFERENTIAL CHARGE APPLIED BY THE STATE
49 INSURANCE FUND TO A workers' compensation and employer's liability
50 insurance {charged to an employer by the state insurance fund which is
51 in excess of the rate promulgated by the workers' compensation rating
52 board} POLICY may be challenged by the {employer} INSURED by an appeal
53 to the superintendent {of insurance} after an exhaustion by the {employ-
54 er} INSURED of all internal review procedures of the state insurance
55 fund as established by rules adopted by the commissioners of the state
56 insurance fund and filed with the secretary of state; provided that a

A. 9817

6

1 writing setting forth the grounds upon which such appeal is based is
2 served and filed with the superintendent {of insurance} and with the
3 secretary to the board of commissioners of the state insurance fund
4 within thirty days after a final determination by the state insurance
5 fund. Appeals to the superintendent {of insurance} shall be determined
6 upon papers and documents {which} THAT were before the state insurance

7 fund in connection with the internal review procedures, the writing
8 setting forth the grounds of the {employer's} INSURED'S appeal and any
9 answer {thereto} TO SUCH APPEAL served by the state insurance fund upon
10 the {employer} INSURED and filed with the superintendent within thirty
11 days after the service of the {employer's} INSURED'S notice.

12 S 14. Subsections (c), (d) and (e) of section 308 of the insurance law
13 are REPEALED and subsections (f) and (g) are relettered subsections (c)
14 and (d).

15 S 15. Subsection (a) of section 308 of the insurance law, as amended
16 by chapter 666 of the laws of 1997, is amended to read as follows:

17 (a) The superintendent may also address to any health maintenance
18 organization {or its officers or}, any authorized insurer {or its offi-
19 cers} OR RATE SERVICE ORGANIZATION, OR OFFICERS THEREOF, any inquiry in
20 relation to its transactions or condition or any matter connected there-
21 with. Every corporation or person so addressed shall reply in writing to
22 such inquiry promptly and truthfully, and such reply shall be, if
23 required by the superintendent, subscribed by such individual, or by
24 such officer or officers of a corporation, as he shall designate, and
25 affirmed by them as true under the penalties of perjury. In the event
26 any corporation or person does not provide a good faith response to an
27 inquiry from the superintendent pursuant to this section relating to
28 accident insurance, health insurance, accident and health insurance or
29 health maintenance organization coverage, within a time period specified
30 by the superintendent of not less than fifteen business days, the super-
31 intendent is authorized to levy a civil penalty, after notice and hear-
32 ing, against such corporation or person not to exceed five hundred
33 dollars per day for each day beyond the date specified by the super-
34 intendent for response, but in no event shall such penalty exceed seven
35 thousand five hundred dollars.

36 S 16. This act shall take effect February 1, 2008; provided that the
37 amendments to paragraph 2 of subsection (a) of section 2316 of the
38 insurance law made by section eleven of this act shall take effect on
39 the same date that section 68 of chapter 6 of the laws of 2007 takes
40 effect; provided further that the amendments to section 2316 of the
41 insurance law made by section eleven of this act shall not affect the
42 expiration of such section pursuant to section 2342 of the insurance law
43 and shall be deemed expired therewith; and provided further that section
44 ten of this act shall expire and be deemed repealed June 2, 2013.