

New York State Assembly - Viewing 1995/1996 Bill A11331 Text

Text of New York State 1995/1996 Bill A11331

STATE OF NEW YORK

11331

IN ASSEMBLY

July 12, 1996

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Bragman, Nolan, Silver, Grannis, Aubry, Balboni, Canestrari, Faso, Tokasz, O`Shea, Pretlow, Reynolds, Rivera, Robach, Morelle, Townsend, Winner) -- (at request of the Governor) -- read once and referred to the Committee on Labor

AN ACT to amend the workers` compensation law, the civil practice law and rules, the general obligations law, the insurance law, the penal law, the labor law, and the state finance law; to amend chapter 729 of the laws of 1993 amending the workers` compensation law and other laws relating to workers` compensation reform, in relation to extending the effectiveness of certain provisions; to repeal certain provisions of the workers` compensation law relating to services rendered; and to repeal certain provisions of the insurance law upon expiration thereof and relating to the expiration of article 4 of such law; to amend chapter 720 of the laws of 1981 amending the insurance law and other laws relating to the authorization for the insurance frauds bureau within the department of insurance, in relation to the effectiveness of certain provisions and to repeal certain provisions of such chapter relating thereto; implementing the findings and policy as set forth in chapter 302 of the laws of 1995 and to repeal certain provisions of the labor law relating thereto

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

1 Section 1. Legislative intent. When New York`s workers` compensation

2 law was enacted in 1914 it signified the culmination of agreement
3 between labor and management designed to provide timely payment of disa-
4 bility and medical benefits to injured workers at a reasonable cost to
5 employers.

6 It is the intent of the legislature that the workers` compensation law
7 be interpreted and implemented in the spirit in which it was first
8 enacted so that a safe workplace is ensured, workers obtain necessary
9 medical care benefits and compensation for workplace injuries, and
10 employers obtain a degree of economic protection from devastating
11 lawsuits. It is the specific intent of this legislature to enact a
12 package of statutory provisions that are balanced and which seek to

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

LBD15140-01-6

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1 affirm the spirit of cooperation between labor and management that
2 distinguished the workers` compensation law`s enactment. It is the
3 further intent of the legislature to create a system which protects
4 injured workers and delivers wage replacement benefits in a fair, equi-
5 table and efficient manner, while reducing time-consuming bureaucratic
6 delays, and repealing DOLE liability except in cases of grave injury.

7 S 2. Section 11 of the workers` compensation law, as amended by chap-
8 ter 346 of the laws of 1990, is amended to read as follows:

9 S 11. Alternative remedy. The liability of an employer prescribed by
10 the last preceding section shall be exclusive and in place of any other
11 liability whatsoever, to such employee, his OR HER personal represen-
12 tatives, spouse, parents, dependents {or next of kin, or anyone},
13 DISTRIBUTEES, OR ANY PERSON otherwise entitled to recover damages,
14 CONTRIBUTION OR INDEMNITY, at common law or otherwise, on account of
15 such injury or death OR LIABILITY ARISING THEREFROM, except that if an
16 employer fails to secure the payment of compensation for his OR HER
17 injured employees and their dependents as provided in section fifty of
18 this chapter, an injured employee, or his OR HER legal representative in
19 case of death results from the injury, may, at his OR HER option, elect
20 to claim compensation under this chapter, or to maintain an action in
21 the courts for damages on account of such injury; and in such an action
22 it shall not be necessary to plead or prove freedom from contributory
23 negligence nor may the defendant plead as a defense that the injury was
24 caused by the negligence of a fellow servant nor that the employee
25 assumed the risk of his OR HER employment, nor that the injury was due
26 to the contributory negligence of the employee. The liability under
27 this chapter of The New York Jockey Injury Compensation Fund, Inc.

28 created under section two hundred thirteen-a of the racing, pari-mutuel
29 wagering and breeding law shall be limited to the provision of workers`
30 compensation coverage and any statutory penalties resulting from the
31 failure to provide such coverage.

32 FOR PURPOSES OF THIS SECTION THE TERMS "INDEMNITY" AND "CONTRIBUTION"
33 SHALL NOT INCLUDE A CLAIM OR CAUSE OF ACTION FOR CONTRIBUTION OR INDEM-
34 NIFICATION BASED UPON A PROVISION IN A WRITTEN CONTRACT ENTERED INTO
35 PRIOR TO THE ACCIDENT OR OCCURRENCE BY WHICH THE EMPLOYER HAD EXPRESSLY
36 AGREED TO CONTRIBUTION TO OR INDEMNIFICATION OF THE CLAIMANT OR PERSON
37 ASSERTING THE CAUSE OF ACTION FOR THE TYPE OF LOSS SUFFERED.

38 AN EMPLOYER SHALL NOT BE LIABLE FOR CONTRIBUTION OR INDEMNITY TO ANY
39 THIRD PERSON BASED UPON LIABILITY FOR INJURIES SUSTAINED BY AN EMPLOYEE
40 ACTING WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT FOR SUCH EMPLOYER
41 UNLESS SUCH THIRD PERSON PROVES THROUGH COMPETENT MEDICAL EVIDENCE
THAT

42 SUCH EMPLOYEE HAS SUSTAINED A "GRAVE INJURY" WHICH SHALL MEAN ONLY ONE
43 OR MORE OF THE FOLLOWING: DEATH, PERMANENT AND TOTAL LOSS OF USE OR
44 AMPUTATION OF AN ARM, LEG, HAND OR FOOT, LOSS OF MULTIPLE FINGERS, LOSS
45 OF MULTIPLE TOES, PARAPLEGIA OR QUADRIPLÉGIA, TOTAL AND PERMANENT BLIND-
46 NESS, TOTAL AND PERMANENT DEAFNESS, LOSS OF NOSE, LOSS OF EAR, PERMANENT
47 AND SEVERE FACIAL DISFIGUREMENT, LOSS OF AN INDEX FINGER OR AN ACQUIRED
48 INJURY TO THE BRAIN CAUSED BY AN EXTERNAL PHYSICAL FORCE RESULTING IN
49 PERMANENT TOTAL DISABILITY.

50 FOR PURPOSES OF THIS SECTION "PERSON" MEANS ANY INDIVIDUAL, FIRM,
51 COMPANY, PARTNERSHIP, CORPORATION, JOINT VENTURE, JOINT-STOCK ASSOCI-
52 ATION, ASSOCIATION, TRUST OR LEGAL ENTITY.

53 S 3. Subdivision 6 of section 29 of the workers` compensation law, as
54 amended by chapter 684 of the laws of 1937, is amended to read as
55 follows:

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1 6. The right to compensation or benefits under this chapter, shall be
2 the exclusive remedy to an employee, or in case of death his OR HER
3 dependents, when such employee is injured or killed by the negligence or
4 wrong of another in the same employ, THE EMPLOYER`S INSURER OR ANY
5 COLLECTIVE BARGAINING AGENT OF THE EMPLOYER`S EMPLOYEES OR ANY EMPLOYEE,
6 OF SUCH INSURER OR SUCH COLLECTIVE BARGAINING AGENT (WHILE ACTING WITHIN
7 THE SCOPE OF HIS OR HER EMPLOYMENT). THE LIMITATION OF LIABILITY OF AN
8 EMPLOYER SET FORTH IN SECTION ELEVEN OF THIS ARTICLE FOR THE INJURY OR
9 DEATH OF AN EMPLOYEE SHALL BE APPLICABLE TO ANOTHER IN THE SAME EMPLOY,
10 THE EMPLOYER`S INSURER, ANY COLLECTIVE BARGAINING AGENT OF THE EMPLOY-
11 ER`S EMPLOYEES OR ANY EMPLOYEE OF THE EMPLOYER`S INSURER OR SUCH COLLEC-
12 TIVE BARGAINING AGENT (WHILE ACTING WITHIN THE SCOPE OF HIS OR HER
13 EMPLOYMENT). THE OPTION TO MAINTAIN AN ACTION IN THE COURTS FOR DAMAGES

14 BASED ON THE EMPLOYER'S FAILURE TO SECURE COMPENSATION FOR INJURED
15 EMPLOYEES AND THEIR DEPENDENTS AS SET FORTH IN SECTION ELEVEN OF THIS
16 ARTICLE SHALL NOT BE CONSTRUED TO INCLUDE THE RIGHT TO MAINTAIN AN
17 ACTION AGAINST ANOTHER IN THE SAME EMPLOY, THE EMPLOYER'S INSURER, ANY
18 COLLECTIVE BARGAINING AGENT OF THE EMPLOYER'S EMPLOYEES OR ANY EMPLOYEE
19 OF THE EMPLOYER'S INSURER OR SUCH COLLECTIVE BARGAINING AGENT (WHILE
20 ACTING WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT).

21 S 4. Section 1401 of the civil practice law and rules, as added by
22 chapter 742 of the laws of 1974, is amended to read as follows:

23 S 1401. Claim for contribution. Except as provided in {section}
24 SECTIONS 15-108 AND 18-201 of the general obligations law, SECTIONS
25 ELEVEN AND TWENTY-NINE OF THE WORKERS' COMPENSATION LAW, OR THE
WORKERS'
26 COMPENSATION LAW OF ANY OTHER STATE OR THE FEDERAL GOVERNMENT, two or
27 more persons who are subject to liability for damages for the same
28 personal injury, injury to property or wrongful death, may claim
29 contribution among them whether or not an action has been brought or a
30 judgment has been rendered against the person from whom contribution is
31 sought.

32 S 5. Subdivision 1 of section 1601 of the civil practice law and
33 rules, as added by chapter 682 of the laws of 1986, is amended to read
34 as follows:

35 1. Notwithstanding any other provision of law, when a verdict or
36 decision in an action or claim for personal injury is determined in
37 favor of a claimant in an action involving two or more tortfeasors
38 jointly liable or in a claim against the state and the liability of a
39 defendant is found to be fifty percent or less of the total liability
40 assigned to all persons liable, the liability of such defendant to the
41 claimant for non-economic loss shall not exceed that defendant's equita-
42 ble share determined in accordance with the relative culpability of each
43 person causing or contributing to the total liability for non-economic
44 loss; provided, however that the culpable conduct of any person not a
45 party to the action shall not be considered in determining any equitable
46 share herein if the claimant proves that with due diligence he OR SHE
47 was unable to obtain jurisdiction over such person in said action (or in
48 a claim against the state, in a court of this state); AND FURTHER
49 PROVIDED THAT THE CULPABLE CONDUCT OF ANY PERSON SHALL NOT BE CONSIDERED
50 IN DETERMINING ANY EQUITABLE SHARE HEREIN TO THE EXTENT THAT ACTION
51 AGAINST SUCH PERSON IS BARRED BECAUSE THE CLAIMANT HAS NOT SUSTAINED A
52 "GRAVE INJURY" AS DEFINED IN SECTION ELEVEN OF THE WORKERS' COMPENSATION
53 LAW.

54 S 6. Subdivision 4 of section 1602 of the civil practice law and
55 rules, as added by chapter 682 of the laws of 1986, is amended to read
56 as follows:

1 4. not apply to claims under the workers` compensation law or to a
 2 claim against a defendant where {such defendant has impleaded a third
 3 party} CLAIMANT HAS SUSTAINED A "GRAVE INJURY" AS DEFINED IN SECTION
 4 ELEVEN OF THE WORKERS` COMPENSATION LAW TO THE EXTENT OF THE EQUITABLE
 5 SHARE OF ANY PERSON against whom the claimant is barred from asserting a
 6 cause of action because of the applicability of the workers` compen-
 7 sation law{, to the extent of the equitable share of said third party}
 8 PROVIDED, HOWEVER, THAT NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED
 9 TO CREATE, IMPAIR, ALTER, LIMIT, MODIFY, ENLARGE, ABROGATE, OR RESTRICT
 10 ANY THEORY OF LIABILITY UPON WHICH ANY PERSON MAY BE HELD LIABLE.

11 S 7. Section 1602 of the civil practice law and rules is amended by
 12 adding a new subdivision 12 to read as follows:

13 12. IN CONJUNCTION WITH THE OTHER PROVISIONS OF THIS ARTICLE NOT BE
 14 CONSTRUED TO CREATE OR ENLARGE ACTIONS FOR CONTRIBUTION OR INDEMNITY
 15 BARRED BECAUSE OF THE APPLICABILITY OF THE WORKERS` COMPENSATION LAW OF
 16 THIS STATE, ANY OTHER STATE OR THE FEDERAL GOVERNMENT, OR SECTION 18-201
 17 OF THE GENERAL OBLIGATIONS LAW.

18 S 8. Section 1603 of the civil practice law and rules, as added by
 19 chapter 682 of the laws of 1986, is amended to read as follows:

20 S 1603. Burdens of proof. In any action or claim for damages for
 21 personal injury a party asserting that the limitations on liability set
 22 forth in this article do not apply shall allege and prove by a prepon-
 23 derance of the evidence that one or more of the exemptions set forth in
 24 SUBDIVISION ONE OF SECTION SIXTEEN HUNDRED ONE OR section sixteen
 25 hundred two applies. A party asserting limited liability pursuant to
 26 this article shall have the burden of proving by a preponderance of the
 27 evidence its equitable share of the total liability.

28 S 9. The general obligations law is amended by adding a new article
 29 18-A to read as follows:

30 ARTICLE 18-A

31 SPECIFICATIONS OF LIABILITY FOR EMPLOYERS AND EMPLOYEES

32 SECTION 18-201. SPECIFICATIONS OF LIABILITY FOR EMPLOYERS AND EMPLOYEES.

33 S 18-201. SPECIFICATIONS OF LIABILITY FOR EMPLOYERS AND EMPLOYEES. 1.

34 AS USED IN THIS SECTION:

35 (A) "PERSON" MEANS ANY INDIVIDUAL, FIRM, COMPANY, PARTNERSHIP, JOINT
 36 VENTURE, JOINT-STOCK ASSOCIATION, CORPORATION, ASSOCIATION, TRUST OR
 37 OTHER LEGAL ENTITY.

38 (B) THE WORDS "EMPLOYER", "EMPLOYEE", "EMPLOYMENT", "COMPENSATION",
 39 "INJURY" AND "DEATH" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION
 40 TWO OF THE WORKERS` COMPENSATION LAW.

41 (C) THE TERMS "INDEMNITY" AND "CONTRIBUTION" SHALL NOT INCLUDE A
 42 CLAIM OR CAUSE OF ACTION FOR CONTRIBUTION OR INDEMNIFICATION BASED UPON
 43 A PROVISION IN A WRITTEN CONTRACT ENTERED INTO PRIOR TO THE ACCIDENT OR

44 OCCURRENCE BY WHICH THE EMPLOYER HAD EXPRESSLY AGREED TO CONTRIBUTION
TO

45 OR INDEMNIFICATION OF THE CLAIMANT OR PERSON ASSERTING THE CAUSE OF
46 ACTION FOR THE TYPE OF LOSS SUFFERED.

47 2. THE LIABILITY OF AN EMPLOYER AND HIS OR HER EMPLOYEES SET FORTH IN
48 SECTIONS TEN, ELEVEN AND TWENTY-NINE OF THE WORKERS` COMPENSATION LAW
49 SHALL BE EXCLUSIVE AND IN PLACE OF ANY OTHER LIABILITY WHATSOEVER, TO
50 EMPLOYEES, THEIR PERSONAL REPRESENTATIVES, SPOUSES, PARENTS, DEPENDENTS,
51 DISTRIBUTEES OR ANY PERSON OTHERWISE ENTITLED TO RECOVER DAMAGES,
52 CONTRIBUTION OR INDEMNITY, AT COMMON LAW OR OTHERWISE, ON ACCOUNT OF
53 INJURY OR DEATH OR LIABILITY ARISING THEREFROM, EXCEPT THAT IF AN
54 EMPLOYER FAILS TO SECURE THE PAYMENT OF COMPENSATION FOR ITS INJURED
55 EMPLOYEES AND THEIR DEPENDENTS AS PROVIDED IN SECTION FIFTY OF THE WORK-
56 ERS` COMPENSATION LAW, AN INJURED EMPLOYEE, OR HIS OR HER LEGAL REPRE-

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1 SENTATIVE IN CASE DEATH RESULTS FROM THE INJURY, MAY, AT HIS OR HER
2 OPTION, ELECT TO CLAIM COMPENSATION UNDER THE WORKERS` COMPENSATION LAW,
3 OR TO MAINTAIN AN ACTION IN THE COURTS FOR DAMAGES AGAINST THE EMPLOYER
4 ON ACCOUNT OF SUCH INJURY; AND IN SUCH AN ACTION IT SHALL NOT BE NECES-
5 SARY TO PLEAD OR PROVE FREEDOM FROM CONTRIBUTORY NEGLIGENCE NOR MAY

THE

6 DEFENDANT PLEAD AS A DEFENSE THAT THE INJURY WAS CAUSED BY THE NEGLI-
7 GENCE OF A FELLOW SERVANT NOR THAT THE EMPLOYEE ASSUMED THE RISK OF HIS
8 OR HER EMPLOYMENT, NOR THAT THE INJURY WAS DUE TO THE CONTRIBUTORY
9 NEGLIGENCE OF THE EMPLOYEE.

10 S 10. The workers` compensation law is amended by adding a new
11 section 134 to read as follows:

12 S 134. WORKPLACE SAFETY AND LOSS PREVENTION PROGRAM; CERTIFICATION OF
13 SAFETY AND LOSS MANAGEMENT SPECIALISTS. 1. THE COMMISSIONER OF LABOR,
14 IN CONSULTATION WITH THE SUPERINTENDENT OF INSURANCE, THE CHAIR OF THE
15 WORKERS` COMPENSATION BOARD, AND THE PRESIDENT OF THE COMPENSATION
16 INSURANCE RATING BOARD, SHALL DEVELOP A COMPULSORY WORKPLACE SAFETY
AND

17 LOSS PREVENTION PROGRAM FOR ALL EMPLOYERS WHOSE MOST RECENT ANNUAL
18 PAYROLL IS IN EXCESS OF EIGHT HUNDRED THOUSAND DOLLARS AND WHOSE MOST
19 RECENT EXPERIENCE RATING EXCEEDS THE LEVEL OF 1.2. THE COMMISSIONER OF
20 LABOR, SHALL REQUEST THAT THE SAFETY PANEL ESTABLISHED BY THIS SECTION
21 PROVIDE RECOMMENDATIONS FOR THE ESTABLISHMENT, CREATION AND

IMPLEMENTA-

22 TION OF THE SAFETY INCENTIVE PROGRAM PROVIDED FOR IN SUBDIVISION SIX OF
23 THIS SECTION AND SHALL PROMULGATE RULES AND REGULATIONS FOR THE IMPLE-
24 MENTATION OF THIS PROGRAM.

25 2. THE COMPENSATION INSURANCE RATING BOARD OR SUCH OTHER RATING ORGAN-

26 IZATION LICENSED BY THE STATE FOR THE PURPOSE OF PROVIDING LOSS AND RATE
27 INFORMATION SHALL PROVIDE WRITTEN NOTIFICATION TO EMPLOYERS WHOSE MOST
28 RECENT ANNUAL PAYROLL IS IN EXCESS OF EIGHT HUNDRED THOUSAND DOLLARS AND
29 WHOSE MOST RECENT EXPERIENCE RATING EXCEEDS THE LEVEL OF 1.2 THAT THEY
30 ARE REQUIRED TO UNDERGO A WORKPLACE SAFETY AND LOSS PREVENTION

CONSULTA-

31 TION AND WRITTEN EVALUATION. COPIES OF THE WRITTEN NOTIFICATION SHALL
32 BE PROVIDED TO THE DEPARTMENT OF LABOR AND THE EMPLOYER'S INSURER. THE
33 EMPLOYER MUST ARRANGE FOR THE CONSULTATION AND EVALUATION WITHIN

THIRTY

34 DAYS AFTER RECEIVING THE NOTIFICATION AND MUST WITHIN TEN DAYS THEREAFT-
35 ER NOTIFY ITS INSURER AND THE DEPARTMENT OF LABOR IN WRITING OF THE
36 MEANS BY WHICH THE EVALUATION IS TO BE ACCOMPLISHED. THE EMPLOYER MUST
37 PROVIDE ITS INSURER AND THE DEPARTMENT OF LABOR WITH A COPY OF THE EVAL-
38 UATION WITHIN THIRTY DAYS AFTER RECEIVING IT FROM THE SAFETY AND LOSS
39 CONSULTANT. ANY REMEDIAL ACTION RECOMMENDED IN THE EVALUATION MUST BE
40 IMPLEMENTED BY THE EMPLOYER WITHIN A REASONABLE PERIOD OF TIME, BUT NOT
41 TO EXCEED SIX MONTHS AFTER THE EMPLOYER RECEIVES THE EVALUATION. THE
42 INSURER, WITHIN SIXTY DAYS AFTER THE EXPIRATION OF SUCH SIX MONTH PERI-
43 OD, SHALL CONDUCT AN INSPECTION TO ASCERTAIN WHETHER THE RECOMMENDED
44 REMEDIAL ACTION HAS BEEN IMPLEMENTED, AND THE INSURER SHALL WITHIN
45 FORTY-FIVE DAYS THEREAFTER PROVIDE TO THE EMPLOYER AND THE DEPARTMENT OF
46 LABOR A COPY OF ITS INSPECTION REPORT.

47 3. IF THE EMPLOYER DOES NOT ARRANGE FOR A CONSULTATION AND EVALUATION
48 OR FAILS TO IMPLEMENT RECOMMENDED REMEDIAL ACTION WITHIN THE TIMES
49 PRESCRIBED, THE INSURER SHALL SURCHARGE THE EMPLOYER'S MANUAL RATE
50 PREMIUM BY .05 FOR THE NEXT ENSUING POLICY PERIOD, AND SO LONG AS
51 NON-COMPLIANCE CONTINUES THERE SHALL BE AN ADDITIONAL .05 SURCHARGE FOR
52 EACH YEAR THEREAFTER OF NON-COMPLIANCE. AN EMPLOYER MAY CHALLENGE AN
53 INSURER'S DETERMINATION THAT THE EMPLOYER HAS NOT TAKEN THE

RECOMMENDED

54 REMEDIAL ACTION BY APPEAL TO THE DEPARTMENT OF LABOR ON NOTICE TO THE
55 INSURER. THE DEPARTMENT OF LABOR SHALL THEREAFTER CONDUCT AN

INDEPENDENT

56 INSPECTION AND ITS DETERMINATION OF COMPLIANCE OR NON-COMPLIANCE SHALL

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1 BE FINAL. HOWEVER, SUCH APPEAL MAY NOT BE ENTERTAINED IF THE EMPLOYER
2 HAS NOT PAID ITS BILLED PREMIUM INCLUDING ANY SURCHARGE THEREOF.

3 4. EMPLOYERS REQUIRED TO PARTICIPATE IN THE WORKPLACE SAFETY AND LOSS
4 PREVENTION PROGRAM ESTABLISHED BY THIS SECTION SHALL BE PERMITTED TO
5 UTILIZE THE SERVICES OF EITHER THE DEPARTMENT OF LABOR, OR A PRIVATE
6 SAFETY AND LOSS CONSULTANT WHICH HAS BEEN CERTIFIED BY THE DEPARTMENT OF
7 LABOR AND HAS PAID THE APPROPRIATE CERTIFICATION FEE PRESCRIBED BY RULES

8 AND REGULATIONS PROMULGATED UNDER THIS SECTION. PRIVATE SAFETY AND LOSS
9 CONSULTANTS MAY CHARGE EMPLOYERS A FEE FOR THEIR SERVICES, AND WHERE
10 EMPLOYERS ELECT TO HAVE THE SERVICES PROVIDED BY THE DEPARTMENT OF
11 LABOR, THEY SHALL PAY FOR SUCH SERVICES IN ACCORDANCE WITH FEE SCHEDULES
12 ESTABLISHED BY THE DEPARTMENT OF LABOR'S RULES AND REGULATIONS.

13 5. FEES CHARGED BY THE DEPARTMENT OF LABOR TO EMPLOYERS FOR WORKPLACE
14 SAFETY AND LOSS PREVENTION CONSULTATIONS AND EVALUATIONS AND FEES
15 CHARGED TO PRIVATE SAFETY AND LOSS CONSULTANTS FOR CERTIFICATION SHALL
16 BE PAID TO THE COMMISSIONER OF TAXATION AND FINANCE AND THE COMPTROLLER
17 AND DEPOSITED IN THE DEPARTMENT OF LABOR ACCOUNTS DESIGNATED FOR SUCH
18 PURPOSES. THE FEES DEPOSITED IN THOSE DESIGNATED ACCOUNTS SHALL BE USED
19 TO COVER ADMINISTRATIVE EXPENSES OF THIS PROGRAM.

20 6. SAFETY INCENTIVE PROGRAM. EMPLOYERS INSURED THROUGH THE STATE
21 INSURANCE FUND (EXCEPT THOSE WHO ARE CURRENT POLICYHOLDERS IN A RECOG-
22 NIZED SAFETY GROUP) OR ANY OTHER INSURER THAT ISSUES POLICIES OF WORK-
23 ERS' COMPENSATION INSURANCE, SHALL BE ELIGIBLE FOR A CREDIT IN WORKERS'
24 COMPENSATION INSURANCE PREMIUMS IF THEY:

25 A. PAY ANNUAL WORKERS' COMPENSATION INSURANCE PREMIUMS OF AT LEAST
26 FIVE THOUSAND DOLLARS; AND

27 B. MAINTAIN AN EXPERIENCE RATING OF UNDER 1.30 FOR THE YEAR PRECEDING
28 AND THE YEARS IN WHICH THE CREDIT HAS BEEN APPLIED FOR PROVIDED THAT NO
29 INSURED REQUIRED TO IMPLEMENT A SAFETY PROGRAM PURSUANT TO SUBDIVISION
30 ONE SHALL BE ELIGIBLE FOR A PREMIUM CREDIT UNDER THIS SUBDIVISION; AND

31 C. IMPLEMENT A SAFETY INCENTIVE PLAN THAT HAS BEEN RECOMMENDED BY A
32 SAFETY AND LOSS MANAGEMENT SPECIALIST AFTER SUCH SPECIALIST HAS BEEN
33 CERTIFIED BY THE SAFETY PANEL ESTABLISHED PURSUANT TO THIS SECTION.

34 THE CREDIT, WHICH SHALL BE FIVE PERCENT OF THE WORKERS' COMPENSATION
35 INSURANCE PREMIUM, SHALL BE PROVIDED TO THE EMPLOYER AT THE END OF THE
36 POLICY YEAR. THE CREDIT SHALL BE AVAILABLE FOR TWO CONSECUTIVE YEARS,
37 PROVIDED THAT THE SAFETY INCENTIVE PLAN SHALL HAVE BEEN IMPLEMENTED FOR
38 A MINIMUM OF SIX MONTHS DURING THE FIRST YEAR FOR WHICH THE CREDIT IS
39 SOUGHT, AND THAT SUCH PLAN SHALL HAVE BEEN IMPLEMENTED FOR A FULL TWELVE
40 MONTHS DURING THE SECOND YEAR FOR WHICH THE CREDIT IS SOUGHT.

41 7. A SELF-INSURED EMPLOYER SHALL BE ELIGIBLE FOR A REDUCTION IN THE
42 SECURITY DEPOSIT PROVIDED FOR IN SUBDIVISION THREE OF SECTION FIFTY OF
43 THIS ARTICLE IF SUCH EMPLOYER HAS IMPLEMENTED A SAFETY INCENTIVE PLAN
44 THAT HAS BEEN RECOMMENDED BY A SAFETY AND LOSS MANAGEMENT SPECIALIST
45 AFTER SUCH SPECIALIST HAS BEEN CERTIFIED BY THE SAFETY PANEL ESTABLISHED
46 PURSUANT TO THIS SECTION. THE AMOUNT OF THE REDUCTION IN THE REQUIRED
47 SECURITY DEPOSIT SHALL BE NO GREATER THAN FIVE PERCENT OR SUCH LESSER
48 AMOUNT AS DETERMINED BY THE CHAIR OF THE BOARD TO BE NECESSARY TO ASSURE
49 THAT THE DEPOSIT REMAINS SUFFICIENT TO SECURE THE EMPLOYER'S LIABILITY
50 TO PAY THE COMPENSATION PROVIDED IN THIS CHAPTER. THE REDUCTION SHALL BE
51 PROVIDED TO THE EMPLOYER AT THE END OF THE POLICY YEAR. THE REDUCTION
52 SHALL BE AVAILABLE FOR TWO CONSECUTIVE YEARS, PROVIDED THAT THE SAFETY

53 INCENTIVE PLAN SHALL HAVE BEEN IMPLEMENTED FOR A MINIMUM OF SIX MONTHS
54 DURING THE FIRST YEAR FOR WHICH THE REDUCTION IS SOUGHT, AND THAT SUCH
55 PLAN SHALL HAVE BEEN IMPLEMENTED FOR A FULL TWELVE MONTHS DURING THE
56 SECOND YEAR FOR WHICH THE REDUCTION IS SOUGHT.

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1 8. THERE IS HEREBY ESTABLISHED A SAFETY PANEL WHICH SHALL HAVE THE
2 RESPONSIBILITY TO: (I) RECEIVE AND REVIEW APPLICATIONS FROM APPLICANTS
3 FOR CERTIFICATION AS SAFETY AND LOSS MANAGEMENT SPECIALISTS; AND (II)
4 CERTIFY PERSONS AS SAFETY AND LOSS MANAGEMENT SPECIALISTS; AND (III)
5 REVOKE CERTIFICATION OF SAFETY AND LOSS MANAGEMENT SPECIALISTS FOR JUST
6 CAUSE.

7 A. THE SAFETY PANEL SHALL CONSIST OF THREE VOTING MEMBERS. ONE MEMBER
8 SHALL BE THE PRESIDENT OF THE COMPENSATION INSURANCE RATING BOARD. THE
9 TWO REMAINING MEMBERS SHALL BE APPOINTED BY THE GOVERNOR AS FOLLOWS: A
10 REPRESENTATIVE OF THE BUSINESS COMMUNITY APPOINTED UPON THE
RECOMMENDA-
11 TION OF THE BUSINESS COUNCIL OF NEW YORK STATE, INCORPORATED; A REPRE-
12 SENTATIVE OF ORGANIZED LABOR APPOINTED UPON THE RECOMMENDATION OF THE
13 NEW YORK STATE AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL
14 ORGANIZATIONS. MEMBERS APPOINTED BY THE GOVERNOR SHALL SERVE FOR TERMS
15 OF THREE YEARS FROM THE DATE OF THEIR APPOINTMENT. SUCH MEMBERS SHALL
16 SERVE UNTIL THEIR SUCCESSORS ARE APPOINTED BY THE GOVERNOR. THE COMMIS-
17 SIONER OF LABOR, THE CHAIR OF THE BOARD AND THE SUPERINTENDENT OF INSUR-
18 ANCE, OR THEIR DESIGNEES, SHALL SERVE AS EX OFFICIO NON-VOTING MEMBERS
19 OF THE SAFETY PANEL.

20 B. THE SAFETY PANEL SHALL MEET AT LEAST QUARTERLY. THE PRESIDENT OF
21 THE COMPENSATION INSURANCE RATING BOARD SHALL SERVE AS CHAIRPERSON.
22 MEMBERS SHALL SERVE WITHOUT COMPENSATION, EXCEPT THAT THEY SHALL BE
23 ALLOWED THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE
PERFORMANCE
24 OF THEIR DUTIES PURSUANT TO THIS SECTION.

25 9. THE BOARD SHALL MONITOR ALL SAFETY INCENTIVE PLANS IMPLEMENTED BY
26 EMPLOYERS. AS PART OF THIS RESPONSIBILITY, THE BOARD SHALL INSURE THAT
27 EMPLOYEE REPRESENTATIVES ARE INVOLVED IN THE DEVELOPMENT OF SUCH PLANS
28 THROUGH MEETINGS AND DISCUSSIONS WITH THE RESPECTIVE CERTIFIED SAFETY
29 AND LOSS MANAGEMENT SPECIALIST.

30 10. AFTER CONSULTATION WITH THE SAFETY PANEL ESTABLISHED PURSUANT TO
31 THIS SECTION, THE COMMISSIONER OF LABOR IN CONSULTATION WITH THE SUPER-
32 INTENDENT OF INSURANCE, SHALL PROMULGATE RULES AND REGULATIONS FOR THE
33 CERTIFICATION OF SAFETY AND LOSS MANAGEMENT SPECIALISTS. SUCH RULES AND
34 REGULATIONS SHALL INCLUDE PROVISIONS THAT OUTLINE THE MINIMUM QUALIFICA-
35 TIONS FOR SAFETY AND LOSS MANAGEMENT SPECIALISTS, PROCEDURES FOR CERTIF-
36 ICATION, CAUSES FOR REVOCATION OR SUSPENSION OF CERTIFICATION AND APPRO-

37 PRIATE ADMINISTRATIVE AND JUDICIAL REVIEW PROCEDURES, VIOLATIONS AND
38 PENALTIES FOR MISUSE OF CERTIFICATION BY CERTIFIED SAFETY AND LOSS
39 MANAGEMENT SPECIALISTS, AND FEES FOR CERTIFICATE AND CERTIFICATE
40 RENEWAL.

41 S 11. The workers` compensation law is amended by adding a new
42 section 135 to read as follows:

43 S 135. PREMIUM CREDITS FOR SAFETY INVESTMENT. 1. AN EMPLOYER INSURED
44 BY A LICENSED INSURER OR THE STATE INSURANCE FUND FOR WORKERS` COMPEN-
45 SATION INSURANCE MAY APPLY FOR A CREDIT AGAINST THE PREMIUMS FOR SUCH
46 COVERAGE PROVIDED SUCH EMPLOYER IS NOT CURRENTLY RECEIVING ANY
STATUTORY
47 SAFETY INCENTIVE OR SANCTION AUTHORIZED UNDER THIS CHAPTER FOR AMOUNTS
48 INVESTED BY SUCH EMPLOYER IN THE CREATION OF A SAFER WORK ENVIRONMENT
49 WHICH MEETS THE REQUIREMENTS OF THIS SECTION. THE CREDIT MAY BE APPLIED
50 FOR A RENEWABLE PERIOD NOT TO EXCEED THREE YEARS. FOR ANY ONE YEAR, THE
51 CREDIT SHALL EQUAL, IF ACTUARIALLY APPROPRIATE, AN AMOUNT UP TO FIVE
52 PERCENT OF THE TOTAL AMOUNT INVESTED AS CALCULATED UNDER THE PROVISIONS
53 OF THIS SECTION BUT SHALL NOT EXCEED FIFTEEN PERCENT OF SUCH EMPLOYER`S
54 ANNUAL EARNED PREMIUM FOR THAT YEAR IN ACCORDANCE WITH COMPENSATION
55 INSURANCE RATING BOARD MANUAL RATES. AN EMPLOYER APPLYING FOR SUCH
56 CREDIT MUST PROVIDE EVIDENCE REQUIRED BY RULES OR REGULATIONS PROMULGAT-

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1 ED BY THE SUPERINTENDENT OF INSURANCE THAT THE INVESTMENT WOULD RESULT
2 IN A SAFER WORK ENVIRONMENT, WITH SUCH EVIDENCE TO INCLUDE A WRITTEN
3 OPINION BY A CERTIFIED SAFETY PROFESSIONAL, A CERTIFIED INDUSTRIAL
4 HYGIENIST OR A LICENSED PROFESSIONAL ENGINEER DESCRIBING THE ITEMS
5 INCLUDED IN THE INVESTMENT AND AN ANALYSIS OF HOW THEY WILL SUBSTANTIAL-
6 LY ENHANCE THE SAFETY OF THE WORK ENVIRONMENT.

7 2. IT SHALL BE THE SOLE RESPONSIBILITY OF THE SUPERINTENDENT OF INSUR-
8 ANCE, WITH THE ASSISTANCE OF A COMMITTEE, TO DETERMINE WHETHER AN
9 EMPLOYER WHO HAS MADE AN APPLICATION IS ELIGIBLE FOR A PREMIUM CREDIT
10 AND THE EXTENT OF ANY SUCH CREDIT, AND TO OTHERWISE ASSIST IN THE ADMIN-
11 ISTRATION OF THE PREMIUM CREDIT PROGRAM, INCLUDING THE PROMULGATION OF
12 INSURANCE DEPARTMENT RULES AND REGULATIONS FOR THE IMPLEMENTATION OF
THE
13 PROGRAM.

14 IN ADDITION TO THE SUPERINTENDENT OF INSURANCE, THE COMMITTEE SHALL
15 CONSIST OF:

- 16 (A) A REPRESENTATIVE FROM THE DEPARTMENT OF LABOR;
- 17 (B) A REPRESENTATIVE FROM THE DEPARTMENT OF ECONOMIC DEVELOPMENT;
- 18 (C) A REPRESENTATIVE FROM THE STATE INSURANCE FUND;
- 19 (D) AN INDIVIDUAL WITH AN ACTUARIAL BACKGROUND AND EXPERIENCE IN THE
20 FIELD OF WORKERS` COMPENSATION;

21 (E) AN INDIVIDUAL WITH A BACKGROUND IN SAFETY ENGINEERING APPOINTED BY
22 THE GOVERNOR UPON RECOMMENDATION BY THE NEW YORK STATE AMERICAN
FEDER-

23 ATION OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZATIONS;

24 (F) AN INDIVIDUAL WITH A BACKGROUND IN SAFETY ENGINEERING APPOINTED BY
25 THE GOVERNOR UPON RECOMMENDATION OF THE BUSINESS COUNCIL OF THE STATE OF
26 NEW YORK;

27 (G) AN INDIVIDUAL WITH A BACKGROUND IN SAFETY ENGINEERING APPOINTED BY
28 THE GOVERNOR UPON RECOMMENDATION OF THE INSURANCE INDUSTRY; AND

29 (H) AN ADDITIONAL MEMBER OF THE COMMITTEE WITH RESPECT TO ANY GIVEN
30 APPLICATION FOR A PREMIUM CREDIT SHALL BE THE CURRENT INSURER OF THE
31 APPLICANT.

32 ALL DEPARTMENTS, DIVISIONS, BOARDS, OFFICES, AND PUBLIC CORPORATIONS
33 OF THE STATE, AND THE COMPENSATION INSURANCE RATING BOARD, SHALL PROVIDE
34 SUCH DATA, INFORMATION OR OTHER ASSISTANCE AS THE COMMITTEE MAY REQUIRE
35 TO FULFILL ITS PURPOSES.

36 THE COMMITTEE SHALL SERVE AT THE PLEASURE OF THE GOVERNOR AND SHALL
37 RECEIVE NO COMPENSATION EXCEPT FOR REASONABLE AND NECESSARY EXPENSES
38 INCURRED IN THE COURSE OF PERFORMING THE OFFICIAL DUTIES OF THE COMMIT-
39 TEE. SUCH EXPENSES SHALL BE PAID FROM APPLICATION FEES PAID IN ACCORD-
40 ANCE WITH RULES AND REGULATIONS PROMULGATED BY THE SUPERINTENDENT OF
41 INSURANCE.

42 3. PREMIUM CREDIT CALCULATIONS WITH RESPECT TO INVESTMENTS FOR SAFETY
43 SHALL BE BASED ONLY UPON TANGIBLE PERSONAL PROPERTY AND OTHER TANGIBLE
44 PROPERTY, INCLUDING BUILDINGS AND STRUCTURAL COMPONENTS OF BUILDINGS
45 WHICH MAKE FOR A SAFER WORK ENVIRONMENT, WHICH ARE DEPRECIABLE
PURSUANT

46 TO SECTION ONE HUNDRED SIXTY-SEVEN OF THE INTERNAL REVENUE CODE, HAVE A
47 USEFUL LIFE OF FOUR YEARS OR MORE, ARE ACQUIRED BY PURCHASE AS DEFINED
48 IN SECTION ONE HUNDRED SEVENTY-NINE(D) OF THE INTERNAL REVENUE CODE,
49 HAVE A SITUS IN THIS STATE AND ARE:

50 (A) PRINCIPALLY USED BY THE PREMIUM PAYER IN THE PRODUCTION OF GOODS
51 BY MANUFACTURING, PROCESSING, ASSEMBLING, REFINING, MINING, EXTRACTING,
52 FARMING, AGRICULTURE, HORTICULTURE, FLORICULTURE, VITICULTURE OR COMMER-
53 CIAL FISHING,

54 (B) INDUSTRIAL WASTE TREATMENT FACILITIES OR AIR POLLUTION CONTROL
55 FACILITIES, USED IN THE PREMIUM PAYER'S TRADE OR BUSINESS, OR

56 (C) RESEARCH AND DEVELOPMENT PROPERTY.

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1 FOR PURPOSES OF THIS SECTION, THE TERM "GOODS" SHALL NOT INCLUDE ELEC-
2 TRICITY.

3 4. FOR PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS SHALL
4 APPLY:

5 (A) MANUFACTURING SHALL MEAN THE PROCESS OF WORKING RAW MATERIALS INTO
6 WARES SUITABLE FOR USE OR WHICH GIVES NEW SHAPES, NEW QUALITY OR NEW
7 COMBINATIONS TO MATTER WHICH ALREADY HAS GONE THROUGH SOME ARTIFICIAL
8 PROCESS BY THE USE OF MACHINERY, TOOLS, APPLIANCES AND OTHER SIMILAR
9 EQUIPMENT. PROPERTY USED IN THE SALE OF GOODS AT RETAIL OR THE
10 PRODUCTION OF GOODS SHALL INCLUDE MACHINERY, EQUIPMENT OR OTHER
TANGIBLE

11 PROPERTY WHICH IS PRINCIPALLY USED IN THE REPAIR AND SERVICE OF OTHER
12 MACHINERY, EQUIPMENT OR OTHER TANGIBLE PROPERTY USED PRINCIPALLY IN THE
13 PRODUCTION OF GOODS AND SHALL INCLUDE ALL FACILITIES USED IN THE
14 PRODUCTION OPERATION, INCLUDING STORAGE OF MATERIAL TO BE USED IN
15 PRODUCTION AND OF THE PRODUCTS THAT ARE PRODUCED.

16 (B) RESEARCH AND DEVELOPMENT PROPERTY SHALL MEAN PROPERTY WHICH IS
17 USED FOR PURPOSES OF RESEARCH AND DEVELOPMENT IN THE EXPERIMENTAL OR
18 LABORATORY SENSE. SUCH PURPOSES SHALL NOT BE DEEMED TO INCLUDE THE
19 ORDINARY TESTING OR INSPECTION OF MATERIALS OR PRODUCTS FOR QUALITY
20 CONTROL, EFFICIENCY SURVEYS, MANAGEMENT STUDIES, CONSUMER SURVEYS,
21 ADVERTISING, PROMOTIONS, OR RESEARCH IN CONNECTION WITH LITERARY,
22 HISTORICAL OR SIMILAR PROJECTS.

23 (C) INDUSTRIAL WASTE TREATMENT FACILITIES SHALL MEAN PROPERTY CONSTI-
24 TUTING FACILITIES FOR THE TREATMENT, NEUTRALIZATION OR STABILIZATION OF
25 INDUSTRIAL WASTE AND OTHER WASTES (AS THE TERMS "INDUSTRIAL WASTE" AND
26 "OTHER WASTES" ARE DEFINED IN SECTION 17-0105 OF THE ENVIRONMENTAL
27 CONSERVATION LAW) FROM A POINT IMMEDIATELY PRECEDING THE POINT OF SUCH
28 TREATMENT, NEUTRALIZATION OR STABILIZATION TO THE POINT OF DISPOSAL,
29 INCLUDING THE NECESSARY PUMPING AND TRANSMITTING FACILITIES, BUT EXCLUD-
30 ING SUCH FACILITIES INSTALLED FOR THE PRIMARY PURPOSE OF SALVAGING MATE-
31 RIALS WHICH ARE USABLE IN THE MANUFACTURING PROCESS OR ARE MARKETABLE.

32 (D) AIR POLLUTION CONTROL FACILITIES SHALL MEAN PROPERTY CONSTITUTING
33 FACILITIES WHICH REMOVE, REDUCE, OR RENDER LESS NOXIOUS AIR CONTAMINANTS
34 EMITTED FROM AN AIR CONTAMINATION SOURCE (AS THE TERMS "AIR CONTAMINANT"
35 AND "AIR CONTAMINATION SOURCE" ARE DEFINED IN SECTION 19-0107 OF THE
36 ENVIRONMENTAL CONSERVATION LAW) FROM A POINT IMMEDIATELY PRECEDING THE
37 POINT OF SUCH REMOVAL, REDUCTION OR RENDERING TO THE POINT OF DISCHARGE
38 OF AIR MEETING EMISSION STANDARDS AS ESTABLISHED BY THE DEPARTMENT OF
39 ENVIRONMENTAL CONSERVATION, BUT EXCLUDING SUCH FACILITIES INSTALLED FOR
40 THE PRIMARY PURPOSE OF SALVAGING MATERIALS WHICH ARE USABLE IN THE MANU-
41 FACTURING PROCESS OR ARE MARKETABLE AND EXCLUDING THOSE FACILITIES WHICH
42 RELY FOR THE EFFICACY ON DILUTION, DISPERSION OR ASSIMILATION OF AIR
43 CONTAMINANTS IN THE AMBIENT AIR AFTER EMISSION. SUCH TERM SHALL FURTHER
44 INCLUDE FLUE GAS DESULFURIZATION EQUIPMENT AND ATTENDANT SLUDGE

DISPOSAL

45 FACILITIES, FLUIDIZED BED BOILERS, PRECOMBUSTION COAL CLEANING FACILI-
46 TIES OR OTHER FACILITIES THAT CONFORM WITH THIS SECTION AND WHICH COMPLY
47 WITH THE PROVISIONS OF THE STATE ACID DEPOSITION CONTROL ACT SET FORTH

48 IN TITLE NINE OF ARTICLE NINETEEN OF THE ENVIRONMENTAL CONSERVATION LAW.
49 5. A PREMIUM CREDIT UNDER THIS SECTION SHALL BE ALLOWED WITH RESPECT
50 TO INDUSTRIAL WASTE TREATMENT FACILITIES AND AIR POLLUTION CONTROL
51 FACILITIES ONLY ON CONDITION THAT SUCH FACILITIES HAVE BEEN CERTIFIED BY
52 THE STATE COMMISSIONER OF ENVIRONMENTAL CONSERVATION OR HIS OR HER
53 DESIGNATED REPRESENTATIVE, PURSUANT TO SUBDIVISION ONE OF SECTION
54 17-0707 OR SUBDIVISION ONE OF SECTION 19-0309 OF THE ENVIRONMENTAL
55 CONSERVATION LAW, AS COMPLYING WITH APPLICABLE PROVISIONS OF THE ENVI-
56 RONMENTAL CONSERVATION LAW, THE PUBLIC HEALTH LAW AND THE STATE
SANITARY

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1 CODE AND CODES, RULES, REGULATIONS, PERMITS OR ORDERS ISSUED PURSUANT
2 THERETO.

3 6. TANGIBLE PERSONAL PROPERTY AND OTHER TANGIBLE PROPERTY, INCLUDING
4 BUILDINGS AND STRUCTURAL COMPONENTS OF BUILDINGS, WHICH AN EMPLOYER
5 LEASES TO ANY OTHER PERSON OR CORPORATION ARE NOT TO BE CONSIDERED AS
6 INVESTMENTS FOR SAFETY IN PREMIUM CREDIT CALCULATIONS. FOR PURPOSES OF
7 THE PRECEDING SENTENCE, ANY CONTRACT OR AGREEMENT TO LEASE OR RENT OR
8 FOR A LICENSE TO USE SUCH PROPERTY SHALL BE CONSIDERED A LEASE.

9 PROVIDED, HOWEVER, IN DETERMINING WHETHER AN EMPLOYER SHALL BE ALLOWED A
10 CREDIT UNDER THIS SECTION WITH RESPECT TO SUCH PROPERTY, ANY ELECTION
11 MADE WITH RESPECT TO SUCH PROPERTY PURSUANT TO THE PROVISIONS OF PARA-
12 GRAPH EIGHT OF SUBSECTION (F) OF SECTION ONE HUNDRED SIXTY-EIGHT OF THE
13 INTERNAL REVENUE CODE, AS SUCH PARAGRAPH WAS IN EFFECT FOR AGREEMENTS
14 ENTERED INTO PRIOR TO JANUARY FIRST, NINETEEN HUNDRED EIGHTY-FOUR, SHALL
15 BE DISREGARDED.

16 7. SUBJECT TO THE LIMITATIONS PROVIDED IN SUBDIVISION ONE OF THIS
17 SECTION, THE AMOUNT OF A PREMIUM CREDIT SHALL BE A PERCENT OF THE
18 INVESTMENT CREDIT BASE. THE INVESTMENT CREDIT BASE IS THE COST OR OTHER
19 BASIS FOR FEDERAL INCOME TAX PURPOSES OF TANGIBLE PERSONAL PROPERTY AND
20 OTHER TANGIBLE PROPERTY, INCLUDING BUILDINGS AND STRUCTURAL COMPONENTS
21 OF BUILDINGS, AS DESCRIBED IN SUBDIVISION THREE OF THIS SECTION. THE
22 AMOUNT OF THE PERCENT TO BE APPLIED AGAINST SUCH INVESTMENT CREDIT BASE
23 SHALL BE BASED UPON THE USEFUL LIFE OF SUCH TANGIBLE PERSONAL PROPERTY
24 AND OTHER TANGIBLE PROPERTY, AND THE EXTENT TO WHICH THE INVESTMENT
25 WOULD RESULT IN A SAFER WORK ENVIRONMENT AND UPON SUCH OTHER

ACTUARIALLY

26 APPROPRIATE EVIDENCE OFFERED BY THE APPLICANT THAT THE INVESTMENT WOULD
27 RESULT IN A SAFER WORK ENVIRONMENT. THE SUPERINTENDENT OF INSURANCE
28 SHALL PROMULGATE RULES AND REGULATIONS DETERMINING HOW THE PERCENTAGE
TO

29 BE APPLIED AGAINST THE INVESTMENT CREDIT BASE SHALL BE CALCULATED.

30 8. THE SUPERINTENDENT OF INSURANCE SHALL PROMULGATE RULES AND REGU-

31 LATIONS FOR THE PURPOSE OF DETERMINING HOW TO CALCULATE THE PERIOD
32 DURING WHICH AN APPLICANT MAY RECEIVE A PREMIUM CREDIT.

33 9. IN THE EVENT AN EMPLOYER WHICH APPLIED FOR AND RECEIVED A PREMIUM
34 CREDIT PURSUANT TO THIS SECTION MOVES OR RELOCATES ITS BUSINESS OUTSIDE
35 OF THIS STATE DURING THE PERIOD IN WHICH IT RECEIVES THE BENEFITS OF
36 SUCH CREDIT, SUCH EMPLOYER SHALL BE RESPONSIBLE FOR REPAYING TO THE
37 INSURER THE ENTIRE AMOUNT OF SUCH CREDIT ALREADY RECEIVED.

38 10. AN EMPLOYER WHO IS OBLIGATED TO BUT DOES NOT COMPLY WITH THE
39 REQUIREMENTS OF SECTION ONE HUNDRED THIRTY-FOUR OF THIS ARTICLE IS NOT
40 ELIGIBLE TO APPLY FOR PREMIUM CREDITS UNDER THIS SECTION.

41 11. AN EMPLOYER SHALL BE ELIGIBLE FOR A CREDIT AGAINST PREMIUMS FOR
42 WORKERS' COMPENSATION INSURANCE COVERAGE IN AN AMOUNT UP TO FIVE
PERCENT

43 OF SUCH PREMIUMS FOR SUCH OTHER SAFETY MEASURES THAT MAY BE IMPLEMENTED
44 BY AN EMPLOYER AND WHICH MEET THE STANDARD FOR SUCH PREMIUM CREDIT AS
45 ESTABLISHED BY THE SUPERINTENDENT. SUCH SAFETY MEASURES SHALL NOT
46 INCLUDE THOSE MEASURES PROVIDED FOR IN THIS SECTION OF THIS ARTICLE, OR
47 APPLY TO SUCH INDUSTRIES PROVIDED FOR IN THIS SECTION.

48 S 12. Intentionally omitted.

49 S 13. The workers' compensation law is amended by adding a new section
50 136 to read as follows:

51 S 136. WORKERS' COMPENSATION FRAUD INSPECTOR GENERAL. 1. DEFINITIONS.

52 FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS SHALL APPLY:

53 (A) "INSPECTOR GENERAL" MEANS THE WORKERS' COMPENSATION FRAUD INSPEC-
54 TOR GENERAL CREATED BY THIS SECTION.

55 (B) "ASSISTANT INSPECTOR GENERAL" MEANS A WORKERS' COMPENSATION FRAUD
56 ASSISTANT INSPECTOR GENERAL CREATED BY THIS SECTION.

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1 2. APPOINTMENT, COMPENSATION AND REMOVAL. NOTWITHSTANDING ANY OTHER
2 PROVISION OF LAW, THE GOVERNOR SHALL APPOINT THE INSPECTOR GENERAL. THE
3 BOARD SHALL EMPLOY AND THE GOVERNOR SHALL FIX THE COMPENSATION OF THE
4 INSPECTOR GENERAL. THE INSPECTOR GENERAL SHALL, AND MAY DO SO WITHOUT
5 CIVIL SERVICE EXAMINATION, APPOINT AND THE BOARD SHALL EMPLOY, SUCH
6 ASSISTANT INSPECTORS GENERAL AND OTHER PERSONS AS HE OR SHE DEEMS NECES-
7 SARY, DETERMINE THEIR DUTIES AND FIX THEIR COMPENSATION. SUCH ASSISTANT
8 INSPECTORS GENERAL SHALL ASSIST THE INSPECTOR GENERAL IN CARRYING OUT
9 THE INSPECTOR GENERAL'S DUTIES AND RESPONSIBILITIES AS SET FORTH IN THIS
10 SECTION AND SHALL HAVE SUCH POWERS AS GRANTED THE INSPECTOR GENERAL
11 UNDER THIS SECTION. EMPLOYEES APPOINTED PURSUANT TO THIS SECTION WITH-
12 OUT CIVIL SERVICE EXAMINATION SHALL BE PLACED IN THE NONCOMPETITIVE
13 CLASS OF THE COMPETITIVE SERVICE PURSUANT TO SUBDIVISION TWO-A OF
14 SECTION FORTY-TWO OF THE CIVIL SERVICE LAW AND SHALL SERVE AT THE PLEAS-
15 URE OF THE GOVERNOR. THE PAYMENT OF SALARIES AND COMPENSATION OF EMPLOY-

16 EES APPOINTED PURSUANT TO THIS SECTION SHALL BE MADE PURSUANT TO SECTION
17 ONE HUNDRED FORTY-EIGHT OF THIS CHAPTER.

18 3. POWERS, DUTIES AND RESPONSIBILITIES. THE INSPECTOR GENERAL SHALL
19 INVESTIGATE VIOLATIONS OF THE LAWS AND REGULATIONS PERTAINING TO THE
20 OPERATION OF THE WORKERS` COMPENSATION SYSTEM. THE INSPECTOR GENERAL
21 SHALL HAVE THE FOLLOWING POWERS, DUTIES AND FUNCTIONS:

22 (A) TO CONDUCT AND SUPERVISE INVESTIGATIONS, WITHIN OR WITHOUT THIS
23 STATE, OF POSSIBLE FRAUD AND OTHER VIOLATIONS OF LAWS, RULES AND REGU-
24 LATIONS PERTAINING TO THE WORKERS` COMPENSATION SYSTEM;

25 (B) TO SUBPOENA WITNESSES, ADMINISTER OATHS OR AFFIRMATIONS, TAKE
26 TESTIMONY AND COMPEL THE PRODUCTION OF SUCH BOOKS, PAPERS, RECORDS AND
27 DOCUMENTS AS THE INSPECTOR GENERAL MAY DEEM TO BE RELEVANT TO AN INVES-
28 TIGATION UNDERTAKEN PURSUANT TO THIS SECTION;

29 (C) TO REPORT TO THE ATTORNEY GENERAL, THE INSURANCE FRAUDS BUREAU, OR
30 OTHER APPROPRIATE LAW ENFORCEMENT AGENCY, VIOLATIONS FOUND THROUGH
31 INVESTIGATIONS UNDERTAKEN PURSUANT TO THIS SECTION AND TO PROVIDE SUCH
32 MATERIALS AND ASSISTANCE AS MAY BE NECESSARY OR APPROPRIATE FOR THE
33 SUCCESSFUL INVESTIGATION AND PROSECUTION OF VIOLATIONS OF THIS CHAPTER;

34 (D) TO SUBMIT A WRITTEN REPORT, ON AN ANNUAL BASIS, TO THE GOVERNOR
35 AND TO THE CHAIR OF THE BOARD, LISTING ALL ACTIVITIES UNDERTAKEN TO THE
36 EXTENT SUCH ACTIVITIES CAN BE DISCLOSED PURSUANT TO SUBDIVISION FIVE OF
37 THIS SECTION; AND

38 (E) TO RECOMMEND LEGISLATIVE AND REGULATORY CHANGES TO THE GOVERNOR
39 AND TO THE CHAIR OF THE BOARD.

40 4. COOPERATION OF AGENCY OFFICIALS AND EMPLOYEES. (A) IN ADDITION TO
41 THE AUTHORITY OTHERWISE PROVIDED BY THIS SECTION, THE INSPECTOR GENERAL,
42 IN CARRYING OUT THE PROVISIONS OF THIS SECTION, IS AUTHORIZED:

43 (I) TO HAVE FULL AND UNRESTRICTED ACCESS TO ALL RECORDS, REPORTS,
44 AUDITS, REVIEWS, DOCUMENTS, PAPERS, RECOMMENDATIONS OR OTHER MATERIAL
45 MAINTAINED BY THE BOARD OR ANY OTHER STATE AGENCY RELATING TO THE WORK-
46 ERS` COMPENSATION SYSTEM, WITH RESPECT TO WHICH THE INSPECTOR GENERAL
47 HAS RESPONSIBILITIES UNDER THIS SECTION; AND

48 (II) TO REQUEST SUCH INFORMATION, ASSISTANCE AND COOPERATION FROM ANY
49 FEDERAL, STATE OR LOCAL GOVERNMENT, DEPARTMENT, BOARD, BUREAU, COMMIS-
50 SION, OR OTHER AGENCY OR UNIT THEREOF AS MAY BE NECESSARY FOR CARRYING
51 OUT THE DUTIES AND RESPONSIBILITIES ENJOINED UPON THE INSPECTOR GENERAL
52 BY THIS SECTION. STATE AND LOCAL AGENCIES OR UNITS THEREOF ARE HEREBY
53 AUTHORIZED AND DIRECTED TO PROVIDE SUCH INFORMATION, ASSISTANCE AND
54 COOPERATION.

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1 (B) NO PERSON SHALL PREVENT, SEEK TO PREVENT, INTERFERE WITH, OBSTRUCT
2 OR OTHERWISE HINDER ANY INVESTIGATION BEING CONDUCTED PURSUANT TO THIS
3 SECTION.

4 5. DISCLOSURE OF INFORMATION. THE INSPECTOR GENERAL SHALL NOT PUBLICLY
5 DISCLOSE INFORMATION WHICH IS:

6 (A) A PART OF AN ONGOING INVESTIGATION OR PROSECUTION; OR

7 (B) SPECIFICALLY PROHIBITED FROM DISCLOSURE BY ANY OTHER PROVISION OF
8 LAW.

9 S 14. Section 96 of the workers` compensation law, as amended by chap-
10 ter 729 of the laws of 1993, is amended to read as follows:

11 S 96. Penalties for fraudulent practices. 1. Any person who {wilful-

12 ly} KNOWINGLY makes a false statement or representation, {deliberately}

13 conceals any material fact, or engages in any other fraudulent scheme or

14 device{,} for the purpose of obtaining {or attempting to obtain, or for

15 the purpose of aiding or abetting any person to obtain}, MAINTAINING OR

16 RENEWING insurance in the state insurance fund at less than the proper

17 rate for such insurance, WHETHER FOR HIMSELF OR HERSELF OR ANY OTHER

18 PERSON OR ENTITY, OR FOR THE PURPOSE OF EVADING THE REQUIREMENTS OF

19 SECTION FIFTY OF THIS CHAPTER OR FOR THE PURPOSE OF OBTAINING ANY BENE-

20 FIT or payment out of such fund {to which such person is not entitled},

21 WHETHER FOR HIMSELF OR HERSELF OR ANY OTHER PERSON OR ENTITY, shall be

22 guilty of a {class A misdemeanor} CLASS E FELONY. If a violation of this

23 subdivision is alleged and such act could also constitute a violation of

24 the penal law OR ANY OTHER LAW, the prosecuting official may charge such

25 person pursuant to the provisions of this section {or may choose to} AND

26 charge such person in accordance with {the penal} SUCH OTHER law OR

27 LAWS. IN ADDITION TO ANY OTHER REMEDY, THE STATE INSURANCE FUND SHALL BE

28 ENTITLED TO RESTITUTION FOR ANY AMOUNT OBTAINED OR WITHHELD AS A RESULT

29 OF A VIOLATION OF THIS SUBDIVISION.

30 2. For {violation} VIOLATIONS of subdivision one of this section, the

31 state insurance fund shall have a right of action to recover civil

32 damages equal to three times the amount wrongfully obtained, or five

33 thousand dollars, whichever is greater. The remedy provided in this

34 section shall be in addition to any other remedy provided by law.

35 S 15. Section 114 of the workers` compensation law is REPEALED and a

36 new section 114 is added to read as follows:

37 S 114. PENALTIES FOR FRAUDULENT PRACTICES. 1. ANY PERSON WHO, KNOW-

38 INGLY AND WITH INTENT TO DEFRAUD PRESENTS, CAUSES TO BE PRESENTED, OR

39 PREPARES WITH KNOWLEDGE OR BELIEF THAT IT WILL BE PRESENTED TO OR BY AN

40 INSURER OR PURPORTED INSURER, OR ANY AGENT THEREOF, ANY WRITTEN STATE-

41 MENT AS PART OF, OR IN SUPPORT OF, AN APPLICATION FOR THE ISSUANCE OF OR

42 THE RATING OF AN INSURANCE POLICY FOR COMPENSATION INSURANCE, OR A CLAIM

43 FOR PAYMENT OR OTHER BENEFIT PURSUANT TO A COMPENSATION POLICY WHICH HE

44 OR SHE KNOWS TO: (I) CONTAIN A FALSE STATEMENT OR REPRESENTATION

45 CONCERNING ANY FACT MATERIAL THERETO; OR (II) OMITTS ANY FACT MATERIAL

46 THERETO, SHALL BE GUILTY OF A CLASS E FELONY. UPON CONVICTION, THE COURT

47 IN ADDITION TO ANY OTHER AUTHORIZED SENTENCE, MAY ORDER FORFEITURE OF

48 ALL RIGHTS TO COMPENSATION OR PAYMENTS OF ANY BENEFIT, AND MAY ALSO

49 REQUIRE RESTITUTION OF ANY AMOUNT RECEIVED AS A RESULT OF A VIOLATION OF
50 THIS SUBDIVISION.

51 2. AN EMPLOYER OR CARRIER, OR ANY EMPLOYEE, AGENT, OR PERSON ACTING ON
52 BEHALF OF AN EMPLOYER OR CARRIER, WHO KNOWINGLY MAKES A FALSE STATEMENT
53 OR REPRESENTATION AS TO A MATERIAL FACT IN THE COURSE OF REPORTING,
54 INVESTIGATION OF, OR ADJUSTING A CLAIM FOR ANY BENEFIT OR PAYMENT UNDER
55 THIS CHAPTER FOR THE PURPOSE OF AVOIDING PROVISION OF SUCH PAYMENT OR
56 BENEFIT SHALL BE GUILTY OF A CLASS E FELONY.

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1 3. A PERSON WHO KNOWINGLY MAKES A FALSE STATEMENT OR REPRESENTATION AS
2 TO A MATERIAL FACT FOR THE PURPOSE OF OBTAINING, MAINTAINING OR RENEWING
3 INSURANCE UNDER THIS CHAPTER, WHETHER FOR HIMSELF OR HERSELF OR FOR ANY
4 OTHER PERSON OR ENTITY OR FOR THE PURPOSE OF EVADING THE REQUIREMENTS OF
5 SECTION FIFTY OF THIS CHAPTER SHALL BE GUILTY OF A CLASS E FELONY. IN
6 ADDITION TO ANY OTHER REMEDY, THE CARRIER PROVIDING INSURANCE SHALL BE
7 ENTITLED TO RESTITUTION OF ANY AMOUNT OBTAINED OR WITHHELD AS A RESULT
8 OF A VIOLATION OF THIS SUBDIVISION.

9 4. CONSISTENT WITH THE PROVISIONS OF THE CRIMINAL PROCEDURE LAW, IN
10 ANY PROSECUTION ALLEGING A VIOLATION OF SUBDIVISION ONE, TWO OR THREE OF
11 THIS SECTION IN WHICH THE ACT OR ACTS ALLEGED MAY ALSO CONSTITUTE A
12 VIOLATION OF THE PENAL OR OTHER LAW, THE PROSECUTING OFFICIAL MAY CHARGE
13 A PERSON PURSUANT TO THE PROVISIONS OF THIS SECTION AND IN THE SAME
14 ACCUSATORY INSTRUMENT WITH A VIOLATION OF SUCH OTHER LAW.

15 S 16. The workers` compensation law is amended by adding a new section
16 114-a to read as follows:

17 S 114-A. DISQUALIFICATION FOR FALSE REPRESENTATION. 1. IF FOR THE
18 PURPOSE OF OBTAINING COMPENSATION PURSUANT TO SECTION FIFTEEN OF THIS
19 CHAPTER, OR FOR THE PURPOSE OF INFLUENCING ANY DETERMINATION REGARDING
20 ANY SUCH PAYMENT, A CLAIMANT KNOWINGLY MAKES A FALSE STATEMENT OR
REPRE-

21 SENTATION AS TO A MATERIAL FACT, SUCH PERSON SHALL BE DISQUALIFIED FROM
22 RECEIVING ANY COMPENSATION DIRECTLY ATTRIBUTABLE TO SUCH FALSE
STATEMENT

23 OR REPRESENTATION. IN ADDITION, AS DETERMINED BY THE BOARD, THE CLAIMANT
24 SHALL BE SUBJECT TO A DISQUALIFICATION OR AN ADDITIONAL PENALTY UP TO
25 THE FOREGOING AMOUNT DIRECTLY ATTRIBUTABLE TO THE FALSE STATEMENT OR
26 REPRESENTATION. ANY PENALTY MONIES SHALL BE PAID INTO THE STATE TREAS-
27 URY.

28 2. IF WITH THE KNOWLEDGE OF A CLAIMANT, ANOTHER PERSON KNOWINGLY MAKES
29 A FALSE STATEMENT OR REPRESENTATION AS TO A MATERIAL FACT FOR THE
30 PURPOSE OF ASSISTING A CLAIMANT IN EITHER OBTAINING, OR INFLUENCING ANY
31 DETERMINATION REGARDING COMPENSATION PURSUANT TO SECTION FIFTEEN OF THIS
32 CHAPTER, SUCH CLAIMANT MAY BE DISQUALIFIED FROM RECEIVING ANY COMPEN-

33 SATION DIRECTLY ATTRIBUTABLE TO SUCH FALSE STATEMENT OR REPRESENTATION.
34 IN ADDITION, AS DETERMINED BY THE BOARD, THE CLAIMANT MAY BE SUBJECT TO
35 A DISQUALIFICATION OR AN ADDITIONAL PENALTY UP TO THE FOREGOING AMOUNT
36 DIRECTLY ATTRIBUTABLE TO THE FALSE STATEMENT OR REPRESENTATION. ANY
37 PENALTY MONIES SHALL BE DEPOSITED TO THE CREDIT OF THE GENERAL FUND OF
38 THE STATE.

39 S 17. Section 43 of the workers` compensation law is REPEALED.

40 S 18. The workers` compensation law is amended by adding a new section
41 114-b to read as follows:

42 S 114-B. READJUSTMENT OF AN EMPLOYER`S EXPERIENCE RATING. IF PURSUANT
43 TO SECTION ONE HUNDRED FOURTEEN-A OF THIS CHAPTER, BENEFITS OR PAYMENTS
44 ARE SUSPENDED OR OTHERWISE PROHIBITED, AND SO LONG AS THE EMPLOYER HAS
45 NOT BEEN FOUND TO BE IN VIOLATION OF SECTION ONE HUNDRED FOURTEEN OF
46 THIS CHAPTER, SUCH EMPLOYER`S EXPERIENCE RATING, OR WHERE THE EMPLOYER
47 IS NOT EXPERIENCE RATED, ANY SURCHARGES RESULTING FROM THE FRAUDULENT
48 CLAIM, SHALL BE READJUSTED TO REFLECT THE POSITION IN WHICH IT WOULD
49 HAVE BEEN, OR THE EXPERIENCE RATING WHICH IT WOULD HAVE HAD, HAD SUCH
50 FRAUDULENT CLAIM NOT BEEN MADE.

51 S 19. Section 406 of the insurance law is amended to read as follows:

52 S 406. Immunity. In the absence of fraud or bad faith, no person
53 {subject to the provisions of this chapter, or the employees or agents
54 of such person,} shall be subject to civil liability, and no civil cause
55 of action of any nature shall arise against such person (i) for any
56 information relating to suspected fraudulent insurance transactions

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1 furnished to law enforcement officials, their agents and employees; and
2 (ii) for any information relating to suspected fraudulent insurance
3 transactions furnished to other persons subject to the provisions of
4 this chapter; and (iii) for any such information furnished in reports to
5 the insurance frauds bureau, its agents or employees OR THE WORKERS`
6 COMPENSATION FRAUD INSPECTOR GENERAL, ITS AGENTS OR EMPLOYEES. Nor
7 shall the superintendent or any employee of the insurance frauds bureau,
8 in the absence of fraud or bad faith, be subject to civil liability and
9 no civil cause of action of any nature shall arise against them by
10 virtue of the publication of any report or bulletin related to the offi-
11 cial activities of the insurance frauds bureau. Nothing herein is
12 intended to abrogate or modify in any way any common law privilege of
13 immunity heretofore enjoyed by any person.

14 S 20. Section 408 of the insurance law is REPEALED.

15 S 21. The penal law is amended by adding a new section 176.35 to read
16 as follows:

17 S 176.35 AGGRAVATED INSURANCE FRAUD.

18 A PERSON IS GUILTY OF AGGRAVATED INSURANCE FRAUD IN THE FOURTH DEGREE

19 WHEN HE COMMITS A FRAUDULENT INSURANCE ACT, AND HAS BEEN PREVIOUSLY
20 CONVICTED WITHIN THE PRECEDING FIVE YEARS OF ANY OFFENSE, AN ESSENTIAL
21 ELEMENT OF WHICH IS THE COMMISSION OF A FRAUDULENT INSURANCE ACT.

22 AGGRAVATED INSURANCE FRAUD IN THE FOURTH DEGREE IS A CLASS D FELONY.

23 S 22. Subsection (a) of section 405 of the insurance law, as amended
24 by chapter 805 of the laws of 1984, is amended to read as follows:

25 (a) Any person licensed pursuant to the provisions of this chapter,
26 and any person engaged in the business of insurance in this state who is
27 exempted from compliance with the licensing requirements of this chap-
28 ter, including the state insurance fund of this state, who has reason to
29 believe that an insurance transaction may be fraudulent, or has know-
30 ledge that a fraudulent insurance transaction is about to take place, or
31 has taken place shall, within thirty days after determination by such
32 person that the transaction appears to be fraudulent, send to the insur-
33 ance frauds bureau on a form prescribed by the superintendent, the
34 information requested by the form and such additional information rela-
35 tive to the factual circumstances of the transaction and the parties
36 involved as the superintendent may require. THE INSURANCE FRAUDS BUREAU
37 SHALL ACCEPT REPORTS OF SUSPECTED FRAUDULENT INSURANCE TRANSACTIONS

FROM

38 ANY SELF INSURER, INCLUDING BUT NOT LIMITED TO SELF INSURERS PROVIDING
39 HEALTH INSURANCE COVERAGE OR THOSE DEFINED IN SECTION FIFTY OF THE WORK-
40 ERS' COMPENSATION LAW, AND SHALL TREAT SUCH REPORTS AS ANY OTHER
41 RECEIVED PURSUANT TO THIS SECTION.

42 S 23. Section 176.05 of the penal law, as added by chapter 720 of the
43 laws of 1981, is amended to read as follows:

44 S 176.05 Insurance fraud; defined.

45 A fraudulent insurance act is committed by any person who, knowingly
46 and with intent to defraud presents, causes to be presented, or prepares
47 with knowledge or belief that it will be presented to or by an insurer,
48 SELF INSURER, or purported insurer, OR PURPORTED SELF INSURER, or any
49 agent thereof, any written statement as part of, or in support of, an
50 application for the issuance of, or the rating of {an} A COMMERCIAL
51 insurance policy, OR CERTIFICATE OR EVIDENCE OF SELF INSURANCE for
52 commercial insurance OR COMMERCIAL SELF INSURANCE, or a claim for
53 payment or other benefit pursuant to an insurance policy OR SELF INSUR-
54 ANCE PROGRAM for commercial or personal insurance which he knows to: (i)
55 contain materially false information concerning any fact material there-

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1 to; or (ii) conceal, for the purpose of misleading, information concern-
2 ing any fact material thereto.

3 S 24. Subdivision 5 of section 176.00 of the penal law, as added by
4 chapter 720 of the laws of 1981, is amended to read as follows:

5 5. "Commercial insurance" means insurance other than personal insur-
6 ance, AND SHALL ALSO INCLUDE INSURANCE PROVIDING DISABILITY BENEFITS
7 PURSUANT TO ARTICLE NINE OF THE WORKERS` COMPENSATION LAW, INSURANCE
8 PROVIDING WORKERS` COMPENSATION BENEFITS PURSUANT TO THE PROVISIONS OF
9 THE WORKERS` COMPENSATION LAW AND ANY PROGRAM OF SELF INSURANCE PROVID-
10 ING SIMILAR BENEFITS.

11 S 25. Section 132 of the workers` compensation law, as added by chap-
12 ter 296 of the laws of 1940, is amended to read as follows:

13 S 132. Criminal prosecution; CERTIFICATIONS. 1. The attorney-general
14 may prosecute every person charged with the commission of a criminal
15 offense in violation of this chapter, or of any rule, regulation or
16 order made thereunder, or in violation of the laws of this state, appli-
17 cable to or arising out of any provision of this chapter or any rule,
18 regulation or order made thereunder.

19 2. EVERY CHECK OR DRAFT ISSUED DIRECTLY TO A BENEFIT RECIPIENT OR
20 PROVIDER OF HEALTH SERVICES IN PAYMENT OF A CLAIM MADE PURSUANT TO THIS
21 CHAPTER SHALL CONTAIN A PRINTED STATEMENT ON THE REVERSE SIDE IMMEDIATE-
22 LY ABOVE THE SIGNATURE LINE FOR THE FIRST ENDORSEMENT INDICATING THAT IN
23 ENDORSING THE CHECK OR DRAFT FOR PAYMENT THE BENEFIT RECIPIENT OR
24 PROVIDER OF HEALTH SERVICES IS CERTIFYING THAT SUCH PERSON IS ENTITLED
25 TO SUCH PAYMENT AND THAT CIRCUMSTANCES WHICH WOULD AFFECT ENTITLEMENT
TO
26 RECEIVE THE PAYMENT HAVE NOT CHANGED. THE STATEMENT SHALL BE IN A FORM
27 PRESCRIBED BY THE WORKERS` COMPENSATION BOARD AFTER CONSULTATION WITH
28 THE SUPERINTENDENT OF INSURANCE.

29 3. THE CHECK OR DRAFT DESCRIBED IN SUBDIVISION TWO OF THIS SECTION
30 SHALL BE CLAIM FORMS WITHIN THE MEANING OF SECTION 176.00 OF THE PENAL
31 LAW AND SUBSECTION (D) OF SECTION FOUR HUNDRED THREE OF THE INSURANCE
32 LAW.

33 S 26. The insurance law is amended by adding a new section 409 to read
34 as follows:

35 S 409. FRAUD PREVENTION PLANS AND SPECIAL INVESTIGATIONS UNITS. (A)
36 EVERY INSURER WRITING PRIVATE OR COMMERCIAL AUTOMOBILE INSURANCE, WORK-
37 ERS` COMPENSATION INSURANCE, OR INDIVIDUAL, GROUP OR BLANKET ACCIDENT
38 AND HEALTH INSURANCE POLICIES ISSUED OR ISSUED FOR DELIVERY IN THIS
39 STATE, EXCEPT FOR INSURERS THAT WRITE LESS THAN THREE THOUSAND OF SUCH
40 POLICIES, ISSUED OR ISSUED FOR DELIVERY IN THIS STATE ANNUALLY, SHALL,
41 WITHIN ONE HUNDRED TWENTY DAYS OF THE EFFECTIVE DATE OF THE REGULATION
42 TO BE PROMULGATED BY THE SUPERINTENDENT TO IMPLEMENT THIS SECTION, FILE
43 WITH THE SUPERINTENDENT A PLAN FOR THE DETECTION, INVESTIGATION AND
44 PREVENTION OF FRAUDULENT INSURANCE ACTIVITIES IN THIS STATE AND THOSE
45 FRAUDULENT INSURANCE ACTIVITIES AFFECTING POLICIES ISSUED OR ISSUED FOR
46 DELIVERY IN THIS STATE.

47 (B) (1) THE PLAN SHALL PROVIDE THE TIME AND MANNER IN WHICH SUCH PLAN
48 SHALL BE IMPLEMENTED, INCLUDING PROVISIONS FOR A FULL-TIME SPECIAL

49 INVESTIGATIONS UNIT AND STAFFING LEVELS WITHIN SUCH UNIT. SUCH UNIT
50 SHALL BE SEPARATE FROM THE UNDERWRITING OR CLAIMS FUNCTIONS OF AN INSUR-
51 ER, AND SHALL BE RESPONSIBLE FOR INVESTIGATING INFORMATION ON OR CASES
52 OF SUSPECTED FRAUDULENT ACTIVITY AND FOR EFFECTIVELY IMPLEMENTING FRAUD
53 PREVENTION AND REDUCTION ACTIVITIES PURSUANT TO THE PLAN FILED WITH THE
54 SUPERINTENDENT. AN INSURER SHALL INCLUDE IN SUCH PLAN STAFFING LEVELS
55 AND ALLOCATIONS OF RESOURCES IN SUCH FULL-TIME SPECIAL INVESTIGATIONS
56 UNIT AS MAY BE NECESSARY AND APPROPRIATE FOR THE PROPER IMPLEMENTATION

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1 OF THE PLAN AND APPROVAL OF SUCH PLAN PURSUANT TO SUBSECTION (D) OF THIS
2 SECTION.

3 (2) IN LIEU OF A SPECIAL INVESTIGATIONS UNIT, AN INSURER MAY CONTRACT
4 WITH A PROVIDER OF SERVICES RELATED TO THE INVESTIGATION OF INFORMATION
5 ON OR CASES OF SUSPECTED FRAUDULENT ACTIVITIES; PROVIDED, HOWEVER, THAT
6 AN INSURER WHICH OPTS FOR CONTRACTING WITH A SEPARATE PROVIDER OF
7 SERVICES, SHALL PROVIDE TO THE SUPERINTENDENT A DETAILED PLAN THEREFOR,
8 PURSUANT TO REQUIREMENTS SET FORTH IN REGULATION BY THE SUPERINTENDENT.

9 (3) PERSONS TO BE DESIGNATED AS SPECIAL INVESTIGATIONS UNIT MEMBERS,
10 OR THOSE WITH WHOM AN INSURER CONTRACTS TO PROVIDE SUCH SERVICES, SHALL
11 MEET THE EDUCATION AND EXPERIENCE QUALIFICATIONS AS SET FORTH IN REGU-
12 LATION BY THE SUPERINTENDENT.

13 (C) THE PLAN SHALL PROVIDE FOR THE FOLLOWING:

14 (1) INTERFACE OF SPECIAL INVESTIGATION UNIT PERSONNEL WITH LAW
15 ENFORCEMENT AND PROSECUTORIAL AGENCIES, INCLUDING THE INSURANCE FRAUDS
16 BUREAU OF THE STATE INSURANCE DEPARTMENT;

17 (2) REPORTING OF FRAUD DATA TO A CENTRAL ORGANIZATION APPROVED BY THE
18 SUPERINTENDENT;

19 (3) IN-SERVICE EDUCATION AND TRAINING FOR UNDERWRITING AND CLAIMS
20 PERSONNEL IN IDENTIFYING AND EVALUATING INSTANCES OF SUSPECTED FRAUDU-
21 LENT ACTIVITY IN UNDERWRITING OR CLAIMS ACTIVITIES;

22 (4) COORDINATION WITH OTHER UNITS OF AN INSURER FOR THE INVESTIGATION
23 AND INITIATION OF CIVIL ACTIONS BASED UPON INFORMATION RECEIVED BY OR
24 THROUGH THE SPECIAL INVESTIGATION UNIT;

25 (5) PUBLIC AWARENESS OF THE COST AND FREQUENCY OF FRAUDULENT ACTIV-
26 ITIES, AND THE METHODS OF PREVENTING FRAUD;

27 (6) DEVELOPMENT AND USE OF A FRAUD DETECTION AND PROCEDURES MANUAL TO
28 ASSIST IN THE DETECTION AND ELIMINATION OF FRAUDULENT ACTIVITY; AND

29 (7) THE TIME AND MANNER IN WHICH SUCH PLAN SHALL BE IMPLEMENTED AND A
30 DEMONSTRATION THAT THE FRAUD PREVENTION AND REDUCTION MEASURES
OUTLINED

31 IN THE PLAN WILL BE FULLY IMPLEMENTED.

32 (D) (1) A FRAUD DETECTION AND PREVENTION PLAN FILED BY AN INSURER WITH
33 THE SUPERINTENDENT PURSUANT TO THIS SECTION SHALL BE DEEMED APPROVED BY

34 THE SUPERINTENDENT IF NOT RETURNED BY THE SUPERINTENDENT FOR REVISION
35 WITHIN ONE HUNDRED TWENTY DAYS OF THE DATE OF FILING. IF THE SUPERINTEN-
36 DENT RETURNS A PLAN FOR REVISION, THE SUPERINTENDENT SHALL STATE THE
37 POINTS OF OBJECTION WITH SUCH PLAN, AND ANY AMENDMENTS AS THE SUPER-
38 INTENDENT MAY REQUIRE CONSISTENT WITH THE PROVISIONS OF THIS SECTION,
39 INCLUDING, BUT NOT LIMITED TO, STAFFING LEVELS, RESOURCE ALLOCATION, OR
40 OTHER POLICY OR OPERATIONAL CONSIDERATIONS. AN AMENDED PLAN REFLECTING
41 THE CHANGES SHALL BE FILED WITH THE SUPERINTENDENT WITHIN FORTY-FIVE
42 DAYS FROM THE DATE OF RETURN.

43 (2) IF THE SUPERINTENDENT HAS RETURNED A PLAN FOR REVISION MORE THAN
44 ONE TIME, THE INSURER SHALL BE ENTITLED TO A HEARING PURSUANT TO THE
45 PROVISIONS OF ARTICLE THREE OF THIS CHAPTER AND REGULATIONS PROMULGATED
46 THEREUNDER.

47 (3) IF AN INSURER FAILS TO SUBMIT A FINAL PLAN WITHIN THIRTY DAYS
48 AFTER A DETERMINATION OF THE SUPERINTENDENT AFTER THE HEARING HELD
49 PURSUANT TO PARAGRAPH TWO OF THIS SUBSECTION, OR OTHERWISE FAILS TO
50 SUBMIT A PLAN, OR FAILS TO IMPLEMENT THE PROVISIONS OF A PLAN IN A TIME
51 AND MANNER PROVIDED FOR IN SUCH PLAN, OR OTHERWISE REFUSES TO COMPLY
52 WITH THE PROVISIONS OF THIS SECTION, THE SUPERINTENDENT MAY: (I) IMPOSE
53 A FINE OF NOT MORE THAN TWO THOUSAND DOLLARS PER DAY FOR SUCH FAILURE BY
54 AN INSURER UNTIL THE SUPERINTENDENT DEEMS THE INSURER TO BE IN COMPLI-
55 ANCE; OR (II) IMPOSE UPON THE INSURER A FRAUD DETECTION AND PREVENTION
56 PLAN DEEMED TO BE APPROPRIATE BY THE SUPERINTENDENT WHICH SHALL BE

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1 IMPLEMENTED BY THE INSURER; OR (III) IMPOSE THE PROVISIONS OF BOTH
2 SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH.

3 (E) ANY PLAN, THE INFORMATION CONTAINED THEREIN, OR CORRESPONDENCE
4 RELATED THERETO, OR ANY OTHER INFORMATION FURNISHED PURSUANT TO THIS
5 SECTION SHALL BE DEEMED TO BE A CONFIDENTIAL COMMUNICATION AND SHALL NOT
6 BE OPEN FOR REVIEW OR BE SUBJECT TO A SUBPOENA EXCEPT BY A COURT ORDER
7 OR BY REQUEST FROM ANY LAW ENFORCEMENT AGENCY OR AUTHORITY.

8 (F) FOR PURPOSES OF THIS SECTION, THE TERM "POLICIES" SHALL REFER TO
9 INDIVIDUALS COVERED IF COVERAGE IS ISSUED ON A GROUP BASIS.

10 (G) EVERY INSURER REQUIRED TO FILE A FRAUD PREVENTION PLAN SHALL
11 REPORT TO THE SUPERINTENDENT ON AN ANNUAL BASIS, NO LATER THAN JANUARY
12 FIFTEENTH, DESCRIBING THE INSURER'S EXPERIENCE, PERFORMANCE AND COST
13 EFFECTIVENESS IN IMPLEMENTING THE PLAN, UTILIZING SUCH FORMS AS THE
14 SUPERINTENDENT MAY PRESCRIBE. UPON CONSIDERATION OF SUCH REPORTS, THE
15 SUPERINTENDENT MAY REQUIRE AMENDMENTS TO THE INSURER'S FRAUD
PREVENTION

16 PLAN AS DEEMED NECESSARY.

17 S 27. Section 8 of chapter 720 of the laws of 1981, amending the
18 insurance law, the executive law, the penal law and the criminal proce-

19 dure law relating to the authorization for the insurance frauds bureau
20 within the department of insurance, as amended by chapter 729 of the
21 laws of 1993, is amended to read as follows:

22 S 8. This act shall take effect November 1, 1981 except that all
23 actions necessary to prepare for implementation of this act may be taken
24 prior to such date. {Section two of this act shall cease to be of any
25 force or effect January 1, 1997.}

26 S 28. Section 7 of chapter 720 of the laws of 1981, amending the
27 insurance law, the executive law, the penal law and the criminal proce-
28 dure law relating to the authorization for the insurance frauds bureau
29 within the department of insurance, is REPEALED.

30 S 29. Subsection (b) of section 304 of the insurance law is amended to
31 read as follows:

32 (b) The person conducting such hearing shall have power to administer
33 oaths, examine and cross-examine witnesses and receive documentary
34 evidence, and shall report his findings, orally or in writing, to the
35 superintendent with or without recommendation. Such report, if adopted
36 by the superintendent or by his authority may be the basis of any deter-
37 mination made by the superintendent or by his authority. ONE HUNDRED
38 TWENTY DAYS AFTER THE EFFECTIVE DATE OF A DETERMINATION OF LIABILITY FOR
39 A CIVIL PENALTY PURSUANT TO SECTION FOUR HUNDRED THREE, TWO THOUSAND ONE
40 HUNDRED TWO OR TWO THOUSAND ONE HUNDRED THIRTY-THREE OF THIS CHAPTER,
41 SUCH DETERMINATION OF LIABILITY FOR A CIVIL PENALTY MAY BE ENTERED AS A
42 JUDGMENT AND ENFORCED, WITHOUT COURT PROCEEDINGS, IN THE SAME MANNER AS
43 THE ENFORCEMENT OF A MONEY JUDGMENT IN CIVIL ACTIONS IN ANY COURT OF
44 COMPETENT JURISDICTION OR ANY OTHER PLACE PROVIDED FOR THE ENTRY OF
45 CIVIL JUDGMENT WITHIN THE STATE OF NEW YORK.

46 S 30. Paragraph (b) of subdivision 2 of section 126 of the workers`
47 compensation law, as amended by chapter 285 of the laws of 1994, is
48 amended to read as follows:

49 (b) Employer certification. The chair, upon recommendation of the
50 labor-management committee, shall implement the pilot program by the
51 authorization of participating employers or groups of employers to
52 contract with providers of medical and other health care services
53 required pursuant to this chapter for all necessary treatment and care
54 of accidental injury arising out of and in the course of employment and
55 occupational disease. All employees of an employer which is participat-
56 ing in the managed care pilot program pursuant to this chapter shall

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1 participate in the managed care pilot program as herein provided. The
2 total number of employees of employers participating in the managed care
3 pilot program shall not exceed {fifteen} FIFTY percent of the state
4 labor force {during the first year of the pilot program and twenty-four

5 percent of the state labor force after the second year of the pilot
6 program; provided, however, that, with respect to such initial periods
7 of twelve and twenty-four months of the pilot program any employer
8 approved to participate in the pilot program whose total number of
9 employees has increased after application for participation shall be
10 counted as employing the number of employees who were on the payroll on
11 the date of certification to participate in the pilot program}. The date
12 for determining the state labor force for the purpose of applying each
13 of such percentages shall be October first, nineteen hundred {ninety-
14 three} NINETY-FIVE. The labor-management committee, in consultation
15 with the New York State School of Industrial and Labor Relations at
16 Cornell University, shall commence a study of the efficacy of the pilot
17 program, and shall make a report of their findings, including but not
18 limited to: (a) whether the pilot program has accomplished the legisla-
19 tive intent; (b) the existence of a waiting list; (c) whether the pilot
20 program has achieved geographic balance; (d) whether there is sufficient
21 employer diversity; (e) whether any competitive advantage inures to
22 employers participating in the pilot program; (f) comparisons to other
23 states` managed care systems; (g) effectiveness of the opt-out period;
24 and (h) a comparison between medical modalities. On or before the twen-
25 ty-fourth month after the pilot program takes effect, such report shall
26 be submitted to the governor and the legislature. The labor-management
27 committee, after consideration of the report, may thereafter vote by a
28 two-thirds vote of the committee to limit participation in the pilot
29 program to fifteen percent of the state labor force. To the extent
30 possible the labor-management committee shall choose employers, seeking
31 to participate in the pilot program, from various geographic regions of
32 the state. {However, the chair, upon} UPON recommendation of the
33 labor-management committee, THE CHAIR shall approve {only those} APPLI-
34 CATIONS BY employers which are located in areas where there {are
35 adequate choices} IS NOT MORE THAN ONE CHOICE of various models of
36 providers of certified managed care{, as provided herein}. Employers
37 shall in no OTHER case be permitted to offer less than two choices of
38 providers. Employers may offer more than two choices of provider and
39 may include among the additional providers a managed care organization
40 in which the employer has a financial interest or an employer-owned
41 medical bureau{,} provided that all such financial interests must be
42 disclosed to all employees of the participating employer. No insurance
43 carrier which provides workers` compensation coverage to the employer
44 shall have a financial interest in a managed care organization or
45 provider of services pursuant to this section which provides medical
46 treatment to the employees of such employer. The chair, upon recommen-
47 dation of the labor-management committee, shall determine the criteria
48 to be utilized in determining whether an adequate number and variety of
49 managed care organizations are available in a given geographic area.

50 The chair, upon recommendation of the labor-management committee, shall
51 ensure that a representative sample of the state workforce participates
52 in the pilot program so as to ensure an accurate study of the pilot
53 program. The chair upon recommendation of the labor-management commit-
54 tee shall promulgate rules and regulations as necessary for implementa-
55 tion of the pilot program.

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1 S 31. Subdivision 13 of section 126 of the workers` compensation law,
2 as amended by chapter 285 of the laws of 1994, is amended to read as
3 follows:

4 13. Permission to seek alternative care. An employee receiving
5 treatment pursuant to a managed care program as provided herein shall
6 be required to utilize his or her initial choice of a certified managed
7 care organization for an injury arising out of and in the course of
8 employment and occupational disease but, at the employee`s request, the
9 employee shall be referred to the New York state occupational health
10 clinics network. Nothing in this section shall prevent an employee
11 dissatisfied with his or her choice of managed care organization, after
12 {fourteen} TWENTY-ONE days (OR AFTER THIRTY DAYS IF COLLECTIVELY
13 BARGAINED BY THE EMPLOYER WITH THE AUTHORIZED COLLECTIVE BARGAINING
14 AGENT OF ITS EMPLOYEES) from receiving initial treatment by his or her
15 initial choice of certified managed care organization, from choosing
16 another certified managed care organization for the purpose of receiving
17 medical or other health care services pursuant to this section or opting
18 out of managed care to a medical or other health care provider otherwise
19 authorized to provide treatment pursuant to this chapter.

20 S 32. Subdivisions 17 and 18 of section 126 of the workers` compen-
21 sation law are REPEALED and a new subdivision 17 is added to read as
22 follows:

23 17. IMPROPER INFLUENCING OF SELECTION OF UNCERTIFIED MANAGED CARE
24 ORGANIZATION; IMPROPER PROVISION OF MEDICAL CARE. ANY EMPLOYER THAT
25 IMPROPERLY INFLUENCES AN INJURED EMPLOYEE`S SELECTION OF A MANAGED CARE
26 ORGANIZATION WHICH IS NOT CERTIFIED BY THE DEPARTMENT OF HEALTH IN
27 ACCORDANCE WITH SUBDIVISION FOUR OF THIS SECTION, AND ANY SUCH MANAGED
28 CARE ORGANIZATION THAT PROVIDES MEDICAL CARE TO AN INJURED EMPLOYEE THAT
29 KNOWS OR SHOULD HAVE KNOWN THAT SUCH EMPLOYEE`S SELECTION OF ITS CARE
30 WAS IMPROPERLY INFLUENCED BY THE EMPLOYER, SHALL BE GUILTY OF A MISDE-
31 MEANOR, AND SHALL NOT BE ELIGIBLE TO RECEIVE ANY PREMIUM CREDITS AND
32 INVESTMENT CREDITS AS AUTHORIZED BY THIS CHAPTER.

33 S 33. Subdivision 22 of section 126 of the workers` compensation law,
34 as added by chapter 729 of the laws of 1993 and as renumbered by chapter
35 285 of the laws of 1994, is amended to read as follows:

36 22. Reporting requirements. Each participating employer, INSURANCE

37 CARRIER, and managed care organization shall provide to the chair and
38 the labor-management committee relevant data excluding information
39 protected by the Personal Privacy Protection Law, to ascertain whether
40 injured or ill employees are receiving all necessary and proper care,
41 and whether the managed care pilot program is resulting in cost contain-
42 ment. The labor-management committee, in consultation with the New York
43 state school of industrial and labor relations at Cornell University
44 shall prepare and submit to the governor and the legislature a report of
45 their findings on or before June first, {nineteen hundred ninety-seven}
46 TWO THOUSAND. The report shall include findings as to the savings
47 achieved or stabilization of workers` compensation premiums rates as a
48 result of utilization of managed care.

49 S 34. Subdivision 23 of section 126 of the workers` compensation law,
50 as added by chapter 729 of the laws of 1993 and as renumbered by chapter
51 285 of the laws of 1994, is amended to read as follows:

52 23. Duration of pilot program. The pilot program shall continue
53 until December thirty-first, {nineteen hundred ninety-seven} TWO THOU-
54 SAND.

55 S 35. Subdivision (d) of section 21 of chapter 729 of the laws of
56 1993 amending the workers` compensation law and other laws relating to

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1 workers` compensation reform, as amended by chapter 285 of the laws of
2 1994, is amended to read as follows:

3 (d) section sixteen of this act shall take effect on the two hundred
4 tenth day after it shall have become a law and shall remain in effect
5 until December 31, {1997} 2000 when it shall be deemed repealed;
6 provided, however, that effective immediately all actions and procedures
7 with respect to the proposed adoption, amendment, suspension or repeal
8 of any rule or regulation as shall be necessary to the timely implemen-
9 tation of this act on or before such effective date are hereby author-
10 ized and directed.

11 S 36. The workers` compensation law is amended by adding a new article
12 10-A to read as follows:

13 ARTICLE 10-A

14 PREFERRED PROVIDER ORGANIZATIONS

15 SECTION 350. SHORT TITLE.

16 351. PREFERRED PROVIDER ORGANIZATIONS; CONTRACTS.

17 352. PREFERRED PROVIDER ORGANIZATIONS; DEFINED.

18 353. PREFERRED PROVIDER ORGANIZATIONS; LICENSING.

19 354. PREFERRED PROVIDER ORGANIZATIONS; MEDICAL TREATMENT.

20 355. PREFERRED PROVIDER ORGANIZATIONS; MEDICAL FEE SCHEDULES.

21 S 350. SHORT TITLE. THIS ARTICLE MAY BE KNOWN AND SHALL BE CITED AS
22 THE "PREFERRED PROVIDER ORGANIZATION ACT".

23 S 351. PREFERRED PROVIDER ORGANIZATIONS; CONTRACTS. ANY STOCK CORPO-
24 RATION, MUTUAL CORPORATION OR RECIPROCAL INSURER AUTHORIZED TO TRANSACT
25 THE BUSINESS OF WORKERS` COMPENSATION INSURANCE IN THIS STATE OR
26 SELF-INSURER MAY CONTRACT WITH A PREFERRED PROVIDER ORGANIZATION TO
27 DELIVER ALL MEDICAL SERVICES MANDATED BY THIS CHAPTER, PROVIDED SUCH
28 CONTRACT TAKES EFFECT ON OR AFTER JANUARY FIRST, NINETEEN HUNDRED NINE-
29 TY-SEVEN AND THE INSURER OR THE EMPLOYER HAS NO FINANCIAL INTEREST IN
30 THE PREFERRED PROVIDER ORGANIZATION. WHERE THERE IS A DUTY TO COLLEC-
31 TIVELY BARGAIN, AN EMPLOYER SHALL COLLECTIVELY BARGAIN THE USE AND
32 IMPLEMENTATION OF A PREFERRED PROVIDER ORGANIZATION WITH THE AUTHORIZED
33 COLLECTIVE BARGAINING AGENT OF ITS EMPLOYEES.

34 S 352. PREFERRED PROVIDER ORGANIZATIONS; DEFINED. AS USED IN THIS
35 ARTICLE, THE TERM "PREFERRED PROVIDER ORGANIZATION" OR "P.P.O." SHALL
36 MEAN A PLAN LICENSED PURSUANT TO SECTION THREE HUNDRED FIFTY-THREE OF
37 THIS ARTICLE OWNED, OPERATED OR ADMINISTERED BY AN ENTITY THAT PROVIDES
38 FOR THE DELIVERY OF ALL SERVICES REQUIRED BY THIS CHAPTER TO ALL PERSONS
39 COVERED BY SUCH PLAN.

40 S 353. PREFERRED PROVIDER ORGANIZATIONS; LICENSING. TO BE LICENSED AS
41 A PREFERRED PROVIDER ORGANIZATION ANY ENTITY, EXCEPT ANY ORGANIZATION
42 WHICH PROVIDES LIMITED HEALTH CARE SERVICES, SHALL MAKE AN APPLICATION
43 TO THE COMMISSIONER OF HEALTH AND SHALL SUBMIT THEREWITH AN APPLICATION
44 FEE OF FIVE HUNDRED DOLLARS. SUCH APPLICATION SHALL BE ACCOMPANIED BY
45 THE INFORMATION PRESCRIBED IN REGULATION. SUCH INFORMATION SHALL INCLUDE
46 BUT NOT BE LIMITED TO THE FOLLOWING:

- 47 1. THE STANDARDS BY WHICH THE PROVIDERS PARTICIPATING IN THE PREFERRED
48 PROVIDER ORGANIZATION SHALL BE SELECTED;
- 49 2. THE NAMES AND CREDENTIALS OF ALL INDIVIDUALS AND ORGANIZATIONS THAT
50 WILL PROVIDE SERVICE UNDER THE PREFERRED PROVIDER ORGANIZATION, TOGETHER
51 WITH APPROPRIATE EVIDENCE OF COMPLIANCE WITH ALL LICENSING OR CERTIF-
52 ICATION REQUIREMENTS FOR SUCH INDIVIDUALS OR ORGANIZATIONS TO PRACTICE
53 IN THIS STATE;
- 54 3. A DESCRIPTION OF ANY FINAL DISPOSITION OF PROFESSIONAL MISCONDUCT
55 CHARGES AGAINST ANY OF THE INDIVIDUALS OR ORGANIZATIONS WHICH WILL

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- 1 PROVIDE MEDICAL OR OTHER HEALTH CARE SERVICES UNDER THE PREFERRED
2 PROVIDER ORGANIZATION PROGRAM;
- 3 4. THE NAMES AND PROFESSIONAL QUALIFICATIONS OF PROVIDERS LICENSED BY
4 THE BOARD IN EACH MEDICAL SPECIALTY;
- 5 5. THE NAMES AND CERTIFICATIONS OF HOSPITALS FROM WHICH EMPLOYEES MAY
6 CHOOSE IN THE EVENT THAT HOSPITALIZATION IS NECESSARY;
- 7 6. A DESCRIPTION OF THE TIMES, PLACES AND MANNER OF PROVIDING SERVICES
8 UNDER THE PREFERRED PROVIDERS ORGANIZATION;
- 9 7. A DETAILED DESCRIPTION OF PROCEDURES TO BE FOLLOWED BY THE

10 PREFERRED PROVIDERS ORGANIZATION FOR ONGOING QUALITY ASSURANCE, UTILIZA-
11 TION REVIEW AND DISPUTE RESOLUTION.

12 EACH PREFERRED PROVIDER ORGANIZATION FORMED PURSUANT TO THIS ARTICLE
13 SHALL COMPLY WITH THE PROVISIONS OF SECTIONS FORTY-FOUR HUNDRED EIGHT,
14 FORTY-FOUR HUNDRED EIGHT-A, FORTY-FOUR HUNDRED SIX-C, FORTY-FOUR HUNDRED
15 SIX-D, SUBDIVISIONS FIVE AND SIX OF SECTION FORTY-FOUR HUNDRED THREE AND
16 ARTICLE FORTY-NINE OF THE PUBLIC HEALTH LAW. THE COMMISSIONER OF
17 HEALTH, IN CONSULTATION WITH THE CHAIR OF THE WORKERS` COMPENSATION
18 BOARD MAY WAIVE OR MODIFY THE APPLICATION OF THESE PROVISIONS TO SUCH
19 ORGANIZATIONS WHERE APPROPRIATE.

20 S 354. PREFERRED PROVIDER ORGANIZATIONS; MEDICAL TREATMENT. 1. EACH
21 PREFERRED PROVIDER ORGANIZATION SHALL PROVIDE AT LEAST FIVE PROVIDERS IN
22 EVERY MEDICAL SPECIALTY FROM WHICH THE EMPLOYEE MAY CHOOSE AND AT LEAST
23 THREE HOSPITALS FROM WHICH THE EMPLOYEE MAY CHOOSE IN THE EVENT THAT
24 HOSPITALIZATION IS NECESSARY. THE CHAIR MAY WAIVE SUCH NUMERICAL
25 REQUIREMENTS UPON A FINDING THAT THE GEOGRAPHICAL AREA IN WHICH THE
26 PREFERRED PROVIDER ORGANIZATION IS LOCATED CANNOT MEET THE REQUIREMENTS.

27 2. AN EMPLOYEE MAY SEEK MEDICAL TREATMENT FROM OUTSIDE THE PREFERRED
28 PROVIDER ORGANIZATION THIRTY DAYS AFTER HIS OR HER FIRST VISIT TO A
29 PREFERRED PROVIDER ORGANIZATION PROVIDER. IN THE EVENT THAT SUCH
30 EMPLOYEE SEEKS MEDICAL TREATMENT OUTSIDE THE PREFERRED PROVIDER ORGAN-
31 IZATION THE EMPLOYER MAY REQUIRE A SECOND OPINION FROM A PROVIDER WITHIN
32 THE PREFERRED PROVIDER ORGANIZATION.

33 3. AN EMPLOYEE MAY SEEK A SECOND OPINION WITH RESPECT TO SUCH MEDICAL
34 TREATMENT FROM ANOTHER PROVIDER WITHIN THE PREFERRED PROVIDER
ORGANIZA-
35 TION AT ANY TIME.

36 S 355. PREFERRED PROVIDER ORGANIZATIONS; MEDICAL FEE SCHEDULES. THE
37 MEDICAL FEE SCHEDULES AUTHORIZED PURSUANT TO SECTION THIRTEEN OF THIS
38 CHAPTER SHALL NOT APPLY TO ANY MEDICAL SERVICES PROVIDED BY A PREFERRED
39 PROVIDER ORGANIZATION PURSUANT TO THE PROVISIONS OF THIS ARTICLE.

40 S 37. Subdivision 6 of section 13-a of the workers` compensation law,
41 as amended by chapter 505 of the laws of 1963, is amended to read as
42 follows:

43 (6) Any interference by any person with the selection by an injured
44 employee of an authorized physician to treat him, EXCEPT WHEN THE
45 SELECTION IS MADE PURSUANT TO ARTICLE TEN-A OF THIS CHAPTER, and the
46 improper influencing or attempt by any person improperly to influence
47 the medical opinion of any physician who has treated or examined an
48 injured employee, shall be a misdemeanor; provided, however, that it
49 shall not constitute interference or improper influence if, in the pres-
50 ence of such injured employee`s physician, an employer, his carrier or
51 agent should recommend or provide information concerning rehabilitation
52 services or the availability thereof to an injured employee or his fami-
53 ly.

54 S 38. Intentionally omitted.

55 S 39. Subdivision 8 of section 15 of the workers` compensation law, as
56 added by chapter 872 of the laws of 1945, paragraph (a) as amended by

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1 chapter 431 of the laws of 1947, paragraph (d) as amended by chapter 545
2 of the laws of 1992, paragraph (e) as amended by chapter 422 of the laws
3 of 1987, paragraph (ee) as amended by chapter 577 of the laws of 1974,
4 paragraph (f) as amended by chapter 352 of the laws of 1990, paragraph
5 (g) as amended by chapter 126 of the laws of 1950, paragraph (h) as
6 amended by chapter 395 of the laws of 1964, the opening paragraph of
7 paragraph (h) as amended by chapter 729 of the laws of 1993 and para-
8 graph (l) as added by chapter 416 of the laws of 1985, is amended to
9 read as follows:

10 8. Disability following previous permanent physical impairment. (a)
11 Declaration of policy and legislative intent. As a guide to the inter-
12 pretation and application of this subdivision, the policy and intent of
13 this legislature is declared to be as follows:

14 First: That every person in this state who works for a living is enti-
15 tled to reasonable opportunity to maintain his independence and self-
16 respect through self-support even after he/SHE has been physically hand-
17 icapped by injury or disease;

18 Second: That any plan which will reasonably, equitably and practically
19 operate to break down hindrances and remove obstacles to the employment
20 of partially disabled persons honorably discharged from our armed forc-
21 es, or any other physically handicapped persons, is of vital importance
22 to the state and its people and is of concern to this legislature;

23 Third: That it is the considered judgment of this legislature that the
24 system embodied in this subdivision, which makes a logical and equitable
25 adjustment of the liability under the {workmen`s} WORKERS` compensation
26 law which an employer must assume in hiring employees, constitutes a
27 practical and reasonable approach to a solution of the problem for the
28 employment of physically handicapped persons.

29 Moreover, because of the insidious nature of slowly developing
30 diseases such as silicosis and other dust diseases and because of the
31 reluctance on the part of employers to employ persons previously exposed
32 to silica or other harmful dust, means should also be provided whereby
33 employers will be encouraged to employ and to continue the employment of
34 such persons, by apportioning liability fairly between the employer and
35 industry as a whole without at the same time removing any incentive for
36 the prevention of harmful dust diseases.

37 (b) Definition. As used in this subdivision, "permanent physical
38 impairment" means any permanent condition due to previous accident or
39 disease or any congenital condition which is or is likely to be a

40 hindrance or obstacle to employment.

41 (c) Permanent total disability after permanent partial disability.
42 Notwithstanding the provisions of paragraph (d) of this subdivision, if
43 an employee who has previously incurred permanent partial disability
44 through the loss of one hand, one arm, one foot, one leg, or one eye,
45 incurs permanent total disability through the loss of another member or
46 organ, he/SHE shall be paid, in addition to the compensation for perma-
47 nent partial disability provided in this section and after the cessation
48 of the payments for the prescribed period of weeks special additional
49 compensation during the continuance of such total disability to the
50 amount of sixty-six and two-thirds per centum of the average weekly wage
51 earned by him/HER at the time the total permanent disability was
52 incurred. If such employee shall establish an earning capacity by
53 employment he shall be paid during the period of such employment,
54 instead of the additional compensation above provided, two-thirds of
55 the difference between his average weekly wages at the time the total
56 disability was incurred and his wage earning capacity as determined by

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1 his actual earnings in such employment, subject to the limitations in
2 subdivision six of this section. Such additional compensation, and
3 expense as in this subdivision provided, shall be paid out of the
4 special disability fund and in the manner as hereinafter in this subdi-
5 vision provided.

6 (d) If an employee of an employer who has secured the payment of
7 compensation as required under the provisions of section fifty of this
8 chapter, who had a total or partial loss or loss of use of one hand, one
9 arm, one foot, one leg or one eye, or who has other permanent physical
10 impairment incurs a subsequent disability by accident arising out of and
11 in the course of his employment or an occupational disease arising ther-
12 efrom, resulting in a permanent disability caused by both conditions
13 that is materially and substantially greater than that which would have
14 resulted from the subsequent injury or occupational disease alone, the
15 employer or his insurance carrier shall in the first instance pay all
16 awards of compensation and all medical expense provided by this chapter,
17 but such employer or his insurance carrier, except as specifically
18 provided in paragraph (ee) of this subdivision, shall be reimbursed from
19 the special disability fund created by this subdivision for all compen-
20 sation and medical benefits subsequent to those payable for the first
21 one hundred four weeks of disability FOR CLAIMS WHERE THE DATE OF ACCI-
22 DENT OR DATE OF DISABLEMENT OCCURRED PRIOR TO AUGUST FIRST, NINETEEN
23 HUNDRED NINETY-FOUR, AND TWO HUNDRED SIXTY WEEKS OF DISABILITY FOR
24 CLAIMS WHERE THE DATE OF ACCIDENT OR DATE OF DISABLEMENT OCCURRED ON OR
25 AFTER AUGUST FIRST, NINETEEN HUNDRED NINETY-FOUR, regardless of know-

26 ledge on the part of the employer as to the existence of such pre-exist-
27 ing permanent physical impairment.

28 Notwithstanding anything to the contrary in this chapter, there may be
29 apportionment of liability for the special disability fund under this
30 subdivision within a single claim by disposition between the fund,
31 carriers, self-insurers or employers.

32 (e) If the subsequent injury of such an employee resulting from an
33 accident arising out of and in the course of his employment or an occu-
34 pational disease resulting therefrom, as set forth in paragraph (d) of
35 this subdivision, shall result in the death of the employee and it shall
36 be determined that either the injury or death would not have occurred
37 except for such pre-existing permanent physical impairment, the employer
38 or his insurance carrier shall in the first instance pay the funeral
39 expenses and the death benefits prescribed by this chapter, but he or
40 his insurance carrier, except as specifically provided in paragraph (ee)
41 of this subdivision, shall be reimbursed from the special disability
42 fund created by this subdivision for all death benefits payable in

43 excess of one hundred four weeks OF DISABILITY FOR CLAIMS WHERE THE DATE
44 OF ACCIDENT OR DATE OF DISABLEMENT OCCURRED PRIOR TO AUGUST FIRST, NINE-
45 TEEN HUNDRED NINETY-FOUR, AND TWO HUNDRED SIXTY WEEKS OF DISABILITY FOR
46 CLAIMS WHERE THE DATE OF ACCIDENT OR DATE OF DISABLEMENT OCCURRED ON OR
47 AFTER AUGUST FIRST, NINETEEN HUNDRED NINETY-FOUR, regardless of know-
48 ledge on the part of the employer as to the existence of such pre-exist-
49 ing permanent physical impairment.

50 (ee) If an employee of an employer who has secured the payment of
51 compensation as required under the provisions of section fifty of this
52 chapter is disabled from silicosis or other dust disease, or in the
53 event of death, death was due to silicosis or other dust disease, and if
54 such an employee has been subject to an injurious exposure in an employ-
55 ment defined under paragraph twenty-nine of subdivision two of section
56 three of this chapter, the provisions of this subdivision shall apply

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1 except as hereinafter stated; and it shall not be required that the
2 employee had, either at the time of hiring or during the employment, any
3 previous physical condition or disability which may result in such disa-
4 bility or death.

5 In all such cases the employer or his insurance carrier shall in the
6 first instance pay all awards of compensation and all medical expense
7 provided by this chapter; and in the event of death, the employer or his
8 insurance carrier shall also in the first instance pay the funeral
9 expenses and the death benefits prescribed by this chapter; but such
10 employer or his insurance carrier shall be reimbursed from the special
11 disability fund created by this subdivision for all compensation and

12 medical benefits subsequent to those payable for the first one hundred
13 four weeks of disability FOR CLAIMS WHERE THE DATE OF ACCIDENT OR DATE
14 OF DISABLEMENT OCCURRED PRIOR TO AUGUST FIRST, NINETEEN HUNDRED NINETY-
15 FOUR, AND TWO HUNDRED SIXTY WEEKS OF DISABILITY FOR CLAIMS WHERE THE
16 DATE OF ACCIDENT OR DATE OF DISABLEMENT OCCURRED ON OR AFTER AUGUST
17 FIRST, NINETEEN HUNDRED NINETY-FOUR, and, in the event of death, the
18 employer or his insurance carrier shall be reimbursed from the special
19 disability fund created by this subdivision for all death benefits paya-
20 ble in excess of one hundred four weeks FOR CLAIMS WHERE THE DATE OF
21 ACCIDENT OR DATE OF DISABLEMENT OCCURRED PRIOR TO AUGUST FIRST, NINETEEN
22 HUNDRED NINETY-FOUR, AND TWO HUNDRED SIXTY WEEKS FOR CLAIMS WHERE THE
23 DATE OF ACCIDENT OR DATE OF DISABLEMENT OCCURRED ON OR AFTER AUGUST
24 FIRST, NINETEEN HUNDRED NINETY-FOUR; provided, however, that when total
25 disability or death occurred after July first, nineteen hundred forty-
26 seven, and prior to July first, nineteen hundred seventy-four, the
27 employer or his insurance carrier shall be reimbursed from the special
28 disability fund created by this subdivision for all compensation and
29 medical benefits including funeral expenses and death benefits subse-
30 quent to those payable for the first two hundred sixty weeks of disabil-
31 ity and death benefits combined; and further provided, however, that in
32 the event of death due to silicosis or other dust disease on or after
33 July first, nineteen hundred forty-seven, of such an employee who shall
34 have been totally disabled from silicosis or other dust disease prior to
35 such date, the employer or his insurance carrier shall be reimbursed
36 from the special disability fund created by this subdivision for death
37 benefits subsequent to those payable for the first one hundred four
38 weeks.

39 The compensation of an employee who has heretofore been found to be
40 totally and permanently disabled from silicosis or other dust disease
41 and whose disablement occurred prior to July first, nineteen hundred
42 forty-seven, shall be continued or resumed, as the case may be, after
43 June first, nineteen hundred fifty-one, and payments shall be made
44 during continuance of such disability at his/HER regular weekly rate,
45 notwithstanding the fact that such compensation is in excess of the
46 maximum provided for his/HER case under former article four-a of this
47 chapter; but such compensation in excess of the maximum so provided
48 shall be paid from the special fund created by this subdivision.

49 (f) Any award under this subdivision shall be made against the employ-
50 er or his or her insurance carrier, but if such employer or insurance
51 carrier be entitled to reimbursement as provided in this subdivision,
52 notice or claim of the right to such reimbursement shall be filed with
53 the board in writing prior to the final determination that the resulting
54 disability is permanent, but in no case more than one hundred four weeks
55 after the date of disability or death or fifty-two weeks after the date
56 that a claim for compensation is filed with the chair, whichever is

1 later, or in the event of the reopening of a case theretofore closed, no
2 later than the determination of permanency upon such reopening.
3 The employer or his or her insurance carrier shall in the first
4 instance make the payments of compensation and medical expenses provided
5 by this subdivision. Whenever for any reason payments are not made by
6 the employer or his or her insurance carrier at any time after the
7 payments have been made for the first one hundred four weeks FOR CLAIMS
8 WHERE THE DATE OF ACCIDENT OR DATE OF DISABLEMENT OCCURRED PRIOR TO
9 AUGUST FIRST, NINETEEN HUNDRED NINETY-FOUR, AND TWO HUNDRED SIXTY WEEKS
10 FOR CLAIMS WHERE THE DATE OF ACCIDENT OR DATE OF DISABLEMENT OCCURRED ON
11 OR AFTER AUGUST FIRST, NINETEEN HUNDRED NINETY-FOUR, the payments of
12 subsequent compensation and medical expenses shall be made out of the
13 special disability fund by the commissioner of taxation and finance upon
14 vouchers approved by the chair of the workers` compensation board. In
15 case any payments prior to the expiration of the first one hundred four
16 weeks FOR CLAIMS WHERE THE DATE OF ACCIDENT OR DATE OF DISABLEMENT
17 OCCURRED PRIOR TO AUGUST FIRST, NINETEEN HUNDRED NINETY-FOUR, AND TWO
18 HUNDRED SIXTY WEEKS FOR CLAIMS WHERE THE DATE OF ACCIDENT OR DATE OF
19 DISABLEMENT OCCURRED ON OR AFTER AUGUST FIRST, NINETEEN HUNDRED NINETY-
20 FOUR are not made by the employer or his or her insurance carrier by
21 reason of the insolvency of such carrier, the payments until the expira-
22 tion of one hundred four weeks FOR CLAIMS WHERE THE DATE OF ACCIDENT OR
23 DATE OF DISABLEMENT OCCURRED PRIOR TO AUGUST FIRST, NINETEEN HUNDRED
24 NINETY-FOUR, AND TWO HUNDRED SIXTY WEEKS FOR CLAIMS WHERE THE DATE OF
25 ACCIDENT OR DATE OF DISABLEMENT OCCURRED ON OR AFTER AUGUST FIRST, NINE-
26 TEEN HUNDRED NINETY-FOUR shall be made out of the stock workers` compen-
27 sation security fund created by the provisions of section one hundred
28 seven of this chapter if the insolvent carrier be a stock company, or
29 out of the mutual workers` compensation security fund created under the
30 provisions of section one hundred nine-d of this chapter if the carrier
31 be a mutual company. If any such payments are not made by an employer
32 permitted to secure the payment of compensation pursuant to the
33 provisions of subdivision three of section fifty of this chapter, the
34 payments shall be made out of the proceeds of the sale of any securities
35 deposited by the employer with the chair, upon vouchers approved by the
36 chair, until such payments have been made for one hundred four weeks FOR
37 CLAIMS WHERE THE DATE OF ACCIDENT OR DATE OF DISABLEMENT OCCURRED PRIOR
38 TO AUGUST FIRST, NINETEEN HUNDRED NINETY-FOUR, AND TWO HUNDRED SIXTY
39 WEEKS FOR CLAIMS WHERE THE DATE OF ACCIDENT OR DATE OF DISABLEMENT
40 OCCURRED ON OR AFTER AUGUST FIRST, NINETEEN HUNDRED NINETY-FOUR, from
41 the date of disability, after which date they shall be made out of the
42 special disability fund in the manner above provided.

43 In all cases in which awards have been made and charged against the
44 special fund or injuries have occurred which would require payments to
45 be made in accordance with the provisions of former subdivision eight of
46 this section as it existed immediately prior to the time this subdivi-
47 sion, as hereby added, takes effect, the compensation so awarded or that
48 shall be awarded in such cases shall continue to be paid out of the
49 special disability fund by the commissioner of taxation and finance upon
50 vouchers approved by the chair of the workers' compensation board, as
51 though this subdivision had not been enacted.

52 (g) Upon the making of a determination that an employer or insurance
53 carrier is entitled to reimbursement from the special disability fund in
54 any case where the employer or insurance carrier has made payment into
55 the aggregate trust fund, as provided in section twenty-seven of this
56 chapter, or where payment of compensation has been commuted into one or

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1 more lump sum payments, the employer or insurance carrier shall be reim-
2 bursed forthwith for the sums paid in excess of those payable for one
3 hundred four weeks FOR CLAIMS WHERE THE DATE OF ACCIDENT OR DATE OF
4 DISABLEMENT OCCURRED PRIOR TO AUGUST FIRST, NINETEEN HUNDRED
5 NINETY-FOUR, TWO HUNDRED SIXTY WEEKS FOR CLAIMS WHERE THE DATE OF ACCI-
6 DENT OR DATE OF DISABLEMENT OCCURRED ON OR AFTER AUGUST FIRST, NINETEEN
7 HUNDRED NINETY-FOUR or two hundred sixty weeks in a silicosis or other
8 dust disease case as OTHERWISE provided in paragraph (ee) of this subdivi-
9 sion, exclusive of administrative and loading charges paid pursuant to
10 section twenty-seven, in accordance with the decision and order of the
11 board. In all other cases such employer or insurance carrier shall,
12 periodically every six months from the decision and order of the board,
13 be reimbursed from such special disability fund for all compensation and
14 medical expense in accordance with the provisions of paragraph (f) of
15 this subdivision.

16 (h) Special disability fund. The fund heretofore maintained and
17 provided for by and pursuant to former subdivision eight of this
18 section, is hereby continued and shall retain the liabilities heretofore
19 charged or chargeable thereto under the provisions of such former subdivi-
20 sion eight of this section as it existed immediately prior to the time
21 this subdivision, as hereby added, takes effect, and the liabilities
22 chargeable thereto under the provisions of former subdivision eight-a of
23 this section as added by chapter seven hundred forty-nine of the laws of
24 nineteen hundred forty-four and repealed at the same time this subdivi-
25 sion, as hereby added, takes effect, and payments therefrom on account
26 of such liabilities shall continue to be made as provided herein. The
27 said fund shall be known as the special disability fund and shall be
28 available only for the purposes stated in this subdivision, and the

29 assets thereof shall not at any time be appropriated or diverted to any
30 other use or purpose. The chair of the workers` compensation board
31 shall, as soon as practicable after April first, nineteen hundred
32 forty-five, assess upon and collect from each insurance carrier, includ-
33 ing the state insurance fund and any county, city, town, village or
34 other political subdivision failing to secure compensation pursuant to
35 {subdivisions} SUBDIVISION one or two of section fifty of this chapter,
36 a sum equal to one per centum of the total compensation paid by such
37 carrier in the year ending March thirty-first next preceding the date of
38 such assessment. As soon as practicable after May first in the year
39 nineteen hundred fifty-eight, and annually thereafter as soon as practi-
40 cable after January first in each succeeding year, the chair of the
41 board shall assess upon and collect from each such insurance carrier a
42 sum equal to that proportion of one hundred {seventy-five} FIFTY per
43 centum of the total disbursements made from the special disability fund
44 during the preceding calendar year, less the amount of the net assets in
45 such fund as of December thirty-first of said preceding calendar year,
46 which the total compensation payments of such carrier bore to the total
47 compensation payments made by all carriers during the fiscal year which
48 ended within said preceding calendar year. An employer who has ceased
49 to be a self-insurer shall continue to be liable for any assessments
50 into said fund on account of any compensation payments made by him or
51 her on his or her account during such fiscal year, and the security
52 fund, created under the provisions of section one hundred seven of this
53 chapter, shall, in the event of the insolvency of any insurance company,
54 be liable for any assessments that would have been made against such
55 company except for its insolvency. No assessment shall be payable from
56 the aggregate trust fund, created under the provisions of section twen-

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1 ty-seven of this chapter, but such fund shall continue to be liable for
2 all compensation that shall be payable under any award or order of the
3 board, the commuted value of which has been paid into such fund. Such
4 assessments when collected shall be deposited with the commissioner of
5 taxation and finance for the benefit of such fund. Such assessments
6 shall not constitute an element of loss for the purpose of establishing
7 rates for workers` compensation insurance but shall for the purpose of
8 recoupment be treated as separate costs by carriers. Carriers shall
9 assess such costs on their policyholders in accordance with rules set
10 forth by the New York compensation insurance rating board, as approved
11 by the superintendent of insurance. The provisions of this paragraph
12 shall not apply with respect to policies containing coverage pursuant to
13 subsection (j) of section three thousand four hundred twenty of the
14 insurance law relating to every policy providing comprehensive personal

15 liability insurance on a one, two, three or four family owner-occupied
16 dwelling. The state insurance fund shall, on or before April first,
17 nineteen hundred ninety-four, notify its insureds that such assessments
18 shall be, for the purpose of recoupment, treated as separate costs for
19 the purpose of premiums billed on and after October first, nineteen
20 hundred ninety-four.

21 (i) When an application for apportionment of compensation is made
22 under this subdivision, the {chairman} CHAIR of the {workmen`s} WORKERS`
23 compensation board shall appoint a representative of such fund in such
24 proceedings, but whenever it shall appear that, through any committee,
25 board or organization representative of the interest of employers or
26 insurance carriers, an attorney has been appointed to act for and on
27 behalf of such employers and insurance carriers generally to represent
28 such fund in any proceedings brought hereunder, the {chairman} CHAIR of
29 the board may designate such attorney as the representative of such
30 special disability fund in proceedings involving claims against such
31 fund. Such representative shall thereafter be given notice of all {hear-
32 ings or} proceedings involving the rights or obligations of such fund.
33 Such representative may apply to the {chairman} CHAIR of the board for
34 authority to hire such medical and other experts and to defray the
35 expense thereof and of such witnesses as may be necessary to a proper
36 defense of any claim, within an amount in the discretion of the {chair-
37 man} CHAIR and, if authorized, such amount shall be a charge against
38 such special disability fund.

39 The provisions of this chapter with respect to procedure, except as
40 may be otherwise provided in this subdivision, and the right of appeal
41 shall be preserved to the claimant and to the employer or his insurance
42 carrier and to such fund through its representative and attorney as
43 herein provided.

44 (j) The provisions of this subdivision, except as herein otherwise
45 provided, shall not be applicable to any case where the accident causing
46 the subsequent injury or death or the disablement or death from a subse-
47 quent occupational disease shall have occurred prior to the time this
48 subdivision, as hereby added, takes effect, provided, however, that any
49 rights that have accrued under former {subdivisions} SUBDIVISION eight
50 or eight-a of this section prior to the time this subdivision, as hereby
51 added, takes effect shall continue to inure to the benefit of any
52 persons affected thereby as though such subdivisions had not been
53 repealed.

54 (k) The additional compensation required to be paid by an employer in
55 the case of the injury {or} OF a minor illegally employed, in accordance
56 with the provisions of subdivisions one and two of section fourteen-a of

1 this chapter, shall not be reimbursable under the provisions of this
2 subdivision.

3 (l) Notwithstanding anything to the contrary in this subdivision, when
4 an employer or carrier shall have paid additional benefits to an employ-
5 ee pursuant to subdivision six of section fourteen of this article as a
6 result of the employee`s increased average weekly wages from wages
7 earned in concurrent employment, reimbursement for all such additional
8 benefits shall be made to the employer or carrier from the special disa-
9 bility fund created by this subdivision. It shall not be required that
10 the employee had, either at the time of hiring or during the employment,
11 any previous physical condition or disability, nor shall it be required
12 that the employee`s disability be permanent in nature. Notice of the
13 right to reimbursement shall be filed with the board in writing prior to
14 the decision making an award, and reimbursement shall be made period-
15 ically, every six months from the decision of the board.

16 S 40-41. Intentionally omitted.

17 S 42. The workers` compensation law is amended by adding a new section
18 21-a to read as follows:

19 S 21-A. TEMPORARY PAYMENT OF COMPENSATION. 1. NOTWITHSTANDING ANY
20 OTHER PROVISION OF THIS CHAPTER TO THE CONTRARY, IN ANY INSTANCE IN
21 WHICH AN EMPLOYER IS UNSURE OF THE EXTENT OF ITS LIABILITY FOR A CLAIM
22 FOR COMPENSATION BY AN INJURED EMPLOYEE PURSUANT TO THIS CHAPTER, SUCH
23 EMPLOYER MAY INITIATE COMPENSATION PAYMENTS AND CONTINUE SUCH
24 PAYMENTS

25 FOR ONE YEAR, WITHOUT PREJUDICE AND WITHOUT ADMITTING LIABILITY, IN
26 ACCORDANCE WITH A NOTICE OF TEMPORARY PAYMENT OF COMPENSATION, ON A
27 FORM

28 PRESCRIBED BY THE BOARD.

29 2. THE NOTICE OF TEMPORARY PAYMENT OF COMPENSATION AUTHORIZED BY
30 SUBDIVISION ONE OF THIS SECTION SHALL BE DELIVERED TO THE INJURED
31 EMPLOYEE AND THE BOARD. SUCH NOTICE SHALL NOTIFY THE INJURED EMPLOYEE
32 THAT THE TEMPORARY PAYMENT OF COMPENSATION SHALL NOT BE DEEMED TO BE
33 AN

34 ADMISSION OF LIABILITY BY THE EMPLOYER FOR THE INJURY OR INJURIES TO THE
35 EMPLOYEE. THE BOARD, UPON RECEIPT OF A NOTICE OF TEMPORARY PAYMENT OF
36 COMPENSATION, SHALL SEND A NOTICE TO THE INJURED EMPLOYEE STATING THAT:

37 (A) THE BOARD HAS RECEIVED A NOTICE OF TEMPORARY PAYMENT OF COMPEN-
38 SATION RELATING TO SUCH INJURED EMPLOYEE;

39 (B) THE PAYMENT OF TEMPORARY COMPENSATION AND THE INJURED EMPLOYEE`S
40 ACCEPTANCE OF SUCH TEMPORARY COMPENSATION SHALL NOT BE AN ADMISSION OF
41 LIABILITY BY THE EMPLOYER, NOR PREJUDICE THE CLAIM OF THE INJURED
42 EMPLOYEE;

43 (C) THE PAYMENT OF TEMPORARY COMPENSATION SHALL TERMINATE ON THE
44 ELAPSE OF: ONE YEAR, OR THE EMPLOYER`S CONTESTING OF THE INJURED EMPLOY-
45 EE`S CLAIM FOR COMPENSATION, OR THE BOARD DETERMINATION OF THE INJURED

43 EMPLOYEES` CLAIM, WHICHEVER IS FIRST; AND

44 (D) THE INJURED EMPLOYEE MAY BE REQUIRED TO ENTER INTO AN AGREEMENT
45 WITH THE EMPLOYER TO ENSURE THE CONTINUATION OF PAYMENTS OF TEMPORARY
46 COMPENSATION.

47 3. AN EMPLOYER MAY CEASE MAKING TEMPORARY PAYMENTS OF COMPENSATION IF
48 SUCH EMPLOYER DELIVERS WITHIN FIVE DAYS AFTER THE LAST PAYMENT, TO THE
49 INJURED EMPLOYEE AND THE BOARD, A NOTICE OF TERMINATION OF TEMPORARY
50 PAYMENTS OF COMPENSATION ON A FORM PRESCRIBED BY THE BOARD. SUCH NOTICE
51 SHALL INFORM THE INJURED EMPLOYEE THAT THE EMPLOYER IS CEASING TEMPORARY
52 PAYMENT OF COMPENSATION. UPON THE CESSATION OF TEMPORARY PAYMENTS OF
53 COMPENSATION, ALL PARTIES TO ANY ACTION PURSUANT TO THIS CHAPTER SHALL
54 RETAIN ALL RIGHTS, DEFENSES AND OBLIGATIONS THEY WOULD OTHERWISE HAVE
55 PURSUANT TO THIS CHAPTER WITHOUT REGARD FOR THE TEMPORARY PAYMENT OF
56 COMPENSATION.

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1 4. THE FAILURE OF AN EMPLOYER TO PROVIDE THE NOTICE OF TERMINATION,
2 PURSUANT TO SUBDIVISION THREE OF THIS SECTION, WITHIN ONE YEAR OF THE
3 COMMENCEMENT OF TEMPORARY PAYMENT OF COMPENSATION SHALL BE DEEMED TO
BE

4 AN ADMISSION OF LIABILITY BY THE EMPLOYER AND THE NOTICE OF TEMPORARY
5 PAYMENT OF COMPENSATION SHALL BE CONVERTED TO A NOTICE OF COMPENSATION
6 PAYABLE.

7 S 43. Section 591 of the labor law is amended by adding a new subdivi-
8 sion 5 to read as follows:

9 5. MAXIMUM COMBINED PAYMENTS. IF A CLAIMANT IS RECEIVING BENEFITS
10 PURSUANT TO SUBDIVISION SIX OF SECTION FIFTEEN OF THE WORKERS` COMPEN-
11 SATION LAW, THE UNEMPLOYMENT BENEFITS TO WHICH A CLAIMANT MAY BE ENTI-
12 TLED PURSUANT TO THIS ARTICLE SHALL BE LIMITED TO THE DIFFERENCE BETWEEN
13 THE AMOUNT OF WORKERS` COMPENSATION BENEFITS AND ONE HUNDRED PERCENT
OF
14 THE CLAIMANT`S AVERAGE WEEKLY WAGE.

15 S 44. Intentionally omitted.

16 S 45. Subdivision 2-a of section 76 and sections 86-b, 89-a, 92-a,
17 95-a, 101, 102, 103, 104 and 105-a of the workers` compensation law are
18 REPEALED.

19 S 46. Subdivision 3 of section 76 of the workers` compensation law, as
20 amended by chapter 109 of the laws of 1975, is amended to read as
21 follows:

22 3. The respective assets and liabilities of the {workmen`s} WORKERS`
23 compensation and disability benefits funds provided in this section
24 shall be and remain separate except that advances may be made from
25 either fund for the payment of benefits and for administrative expenses,
26 subject to annual reimbursement. {In addition, the respective assets and

27 liabilities of the medical and hospital malpractice fund shall be and
28 remain separate from the workmen`s compensation and disability benefits
29 funds, except that advances may be made from the latter funds to the
30 medical and hospital malpractice fund for administrative expenses only,
31 subject to annual reimbursement. }

32 Whenever used in this article the terms "state insurance fund", "state
33 fund" and "fund" shall be deemed to include BOTH THE WORKERS` COMPEN-
34 SATION FUND AND the disability benefits fund {and the medical and hospi-
35 tal malpractice fund,} unless the context otherwise indicates.

36 S 47. Section 77 of the workers` compensation law, as amended by chap-
37 ter 109 of the laws of 1975, is amended to read as follows:

38 S 77. Administration. The state insurance fund shall be administered
39 by the commissioners of the state insurance fund, of whom there shall be
40 eight. The {industrial} commissioner {and the commissioner of health}
41 OF LABOR shall, IN ADDITION, be {commissioners} A COMMISSIONER of such
42 fund by virtue of {their offices} HIS OR HER OFFICE. The commissioners
43 shall elect annually from the appointive members a {chairman} CHAIR and
44 a {vice-chairman} VICE-CHAIR who shall act as {chairman} CHAIR in the
45 absence of the {chairman} CHAIR. The {ex officio commissioners} COMMIS-
46 SIONER OF LABOR may designate a deputy commissioner to act in {their}
47 HIS OR HER place and stead as a commissioner of such fund. The commis-
48 sioners shall be appointed by the governor, by and with the advice and
49 consent of the senate. They shall be policyholders insured in the state
50 insurance fund. The commissioners shall be appointed for terms of three
51 years each. They shall serve until their successors are appointed and
52 have qualified. Vacancies shall be filled for the unexpired terms.
53 Each commissioner shall before entering upon his OR HER duties, take and
54 subscribe the constitutional oath of office which shall be filed in the
55 office of the secretary of state.

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1 S 48. Subdivision 1 of section 82 of the workers` compensation law, as
2 amended by chapter 647 of the laws of 1972, is amended to read as
3 follows:

4 1. The commissioners shall appoint an executive director, a general
5 attorney, a secretary {, and a medical director} for terms of nine years
6 each. Vacancies in such positions shall be filled for the unexpired
7 terms. The commissioners shall also appoint, and may remove, three
8 deputy executive directors and an actuary. The foregoing appointments
9 shall be in the exempt class of the civil service. The actuary shall be
10 responsible directly to the commissioners. They shall also appoint, and
11 may remove, such number of assistant directors as may in their judgment
12 be required for the proper and expeditious conduct of the business of
13 the fund. In the absence of the executive director the deputy executive

14 director named for that purpose by the commissioners shall perform the
15 duties of the executive director. The commissioners shall prescribe the
16 duties of all administrative officers of the fund, except as they may
17 otherwise be prescribed by law.

18 S 49. Subdivision 4 of section 82 of the workers` compensation law, as
19 amended by chapter 694 of the laws of 1958, is amended to read as
20 follows:

21 4. The executive director shall submit to the commissioners an annual
22 estimate of the amounts required for salaries and for the maintenance
23 and expenses of the fund for the next ensuing calendar year. The
24 commissioners shall thereupon consider such estimate, and may modify or
25 approve such estimate. {The estimate shall be submitted to the director
26 of the budget at the time and in the manner set forth in section eight-
27 eight of this chapter.} **THERE MAY NOT BE EXPENDED FOR THE STATE INSUR-**
28 **ANCE FUND MORE THAN THE TOTAL AMOUNT SPECIFIED IN SUCH BUDGET, EXCEPT AS**
29 **AUTHORIZED BY THE COMMISSIONER.**

30 S 50. Section 88 of the workers` compensation law, as amended by chap-
31 ter 109 of the laws of 1975, is amended to read as follows:

32 S 88. Administration expenses. The entire expense of administering the
33 state insurance fund shall be paid out of such fund **WHICH SHALL NOT BE**
34 **CONSIDERED AN AGENCY OR A FUND OF THE STATE FOR THE PURPOSES OF SECTION**
35 **FOUR OF THE STATE FINANCE LAW.** The portion of such expenses applicable
36 and chargeable to the disability benefits fund {and the medical and
37 hospital malpractice fund} shall be determined on an equitable basis
38 with due allowance for the division of overhead expenses. {Not later
39 than the first day of November there} **THERE** shall be submitted to the
40 director of the budget {for his approval an estimated budget of expendi-
41 tures for the succeeding calendar year having due regard to the business
42 interests and contract obligations of the fund. There may not be
43 expended for the state insurance fund for purposes of administration
44 more than the amounts specified in such budget for each item of expendi-
45 ture, except as authorized by the director of the budget} **QUARTERLY**
46 **FINANCIAL STATEMENTS ON A CALENDAR YEAR BASIS.** In no case shall the
47 amount of **ADMINISTRATIVE** expenditures so authorized for an entire year
48 {for workmen`s compensation insurance} **FROM THE WORKERS` COMPENSATION**
49 **FUND** exceed twenty-five per centum of the earned premiums for such
50 insurance for that year. In no case shall the amount of **ADMINISTRATIVE**
51 expenditures authorized for the disability benefits fund for an entire
52 year exceed twenty-five per centum of the premiums earned by that fund
53 **FOR SUCH INSURANCE FOR THAT YEAR.** {In no case shall the amount of
54 expenditures authorized for the medical and hospital malpractice fund
55 for an entire year exceed twenty-five per centum of the premiums earned
56 by that fund. If there be officers or employees of the department whose

1 duties relate partly to the general work of the department and partly to
2 the work of the state insurance fund, and in case there is other expense
3 which is incurred jointly on behalf of the general work of the depart-
4 ment and the state insurance fund, an equitable apportionment of the
5 expense shall be made and the part thereof which is applicable to the
6 state insurance fund shall be chargeable thereto. The expenses of} NO
7 PAYMENT, EXPENDITURE OR REFUND OUT OF THE STATE INSURANCE FUND SHALL BE
8 SUBJECT TO PRE-AUDIT BY the department of audit and control {incurred in
9 connection with the pre-audit of expenditures of the state insurance
10 fund,} as {required} PROVIDED by section one hundred eleven of the state
11 finance law{, shall be a charge against and be paid out of the moneys of
12 the state insurance fund and there shall be included in the annual esti-
13 mate submitted pursuant to this section an amount sufficient to pay such
14 expenses for the period covered by such estimate. The industrial
15 commissioner shall include in his annual report to the legislature a
16 statement of the commissioners showing the expense of administering the
17 state fund for the preceding year}. All appointments to positions in the
18 state insurance fund shall be made subject to civil service require-
19 ments.

20 S 51. Subdivision 6 of section 4 of the state finance law, as sepa-
21 rately added by chapters 405 and 957 of the laws of 1981, is amended to
22 read as follows:

23 6. For the purposes of this section, agency shall mean any department,
24 agency, board, bureau, commission, division, council or office of the
25 state EXCEPT AS OTHERWISE PROVIDED IN SECTION EIGHTY-EIGHT OF THE WORK-
26 ERS` COMPENSATION LAW.

27 S 51-a. The employees in the state insurance fund shall continue to be
28 employees in the civil service of the state and shall retain their civil
29 service classification and status. Nothing contained herein shall effect
30 the rights of any employee under article 14 of the civil service law or
31 any collective bargaining agreement.

32 S 52. Subdivision a of section 94 of the workers` compensation law, as
33 amended by chapter 249 of the laws of 1962, is amended to read as
34 follows:

35 a. Any employer may, upon complying with subdivision two or three of
36 section fifty of this chapter, withdraw from the fund by turning in his
37 insurance contract for cancellation, provided he has given written
38 notice to the fund of his intention to withdraw not less than thirty
39 days before the effective date of such cancellation. Upon receipt of
40 such notice the fund shall, at least ten days prior to the effective
41 date file in the office of the chairman a notice of such cancellation
42 date.

43 In no event shall the insurance contract be deemed cancelled until at
44 least ten days after the date of such filing, any earlier date mentioned

45 in the notice to the contrary notwithstanding.

46 IF AN EMPLOYER WITHDRAWS FROM THE FUND UPON COMPLYING WITH SUBDIVISION
47 TWO OF SECTION FIFTY OF THIS CHAPTER, THE NEW INSURANCE CONTRACT WITH
48 THE STOCK CORPORATION, MUTUAL CORPORATION OR RECIPROCAL INSURER SHALL BE
49 DEEMED NOT TO TAKE EFFECT UNTIL THE CANCELLATION OF SUCH EMPLOYER'S
50 CONTRACT WITH THE STATE INSURANCE FUND HAS BECOME EFFECTIVE.

51 S 53. Subdivision b of section 93 of the workers' compensation law, as
52 added by chapter 94 of the laws of 1988, is amended to read as follows:

53 b. An employer, whose policy of insurance has been cancelled by the
54 state insurance fund for non-payment of premium OR WITHDRAWS PURSUANT TO
55 SECTION NINETY-FOUR OF THIS ARTICLE, is ineligible to contract for a

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1 subsequent policy of insurance with the state insurance fund while the
2 billed premium on the cancelled policy remains uncollected.

3 S 54. Subdivision c of section 93 of the workers' compensation law, as
4 added by chapter 313 of the laws of 1993, is amended to read as follows:

5 c. The state insurance fund shall not be required to write a policy
6 of insurance for any employer which is owned or controlled or the major-
7 ity interest of which is owned or controlled, directly or indirectly, by
8 any person who directly or indirectly owns or controls or owned or
9 controlled at the time of cancellation an employer whose former policy
10 of insurance with the state insurance fund was cancelled for non-payment
11 of premium OR WITHDRAWS PURSUANT TO SECTION NINETY-FOUR OF THIS ARTICLE
12 or who is or was at the time of cancellation the president, vice-presi-
13 dent, secretary or treasurer of such an employer until the billed premi-
14 um on the cancelled policy is paid.

15 For purposes of this subdivision, "person" shall include individuals,
16 partnerships, corporations, and other associations.

17 S 55. Subdivision 6 of section 27 of the workers' compensation law, as
18 amended by chapter 92 of the laws of 1961, is amended to read as
19 follows:

20 6. Such aggregate trust fund shall be kept separate and apart from all
21 other moneys of the state INSURANCE fund, and shall not be liable for
22 any losses or expenses of administration of the state INSURANCE fund
23 other than the expenses involved in the administration of such trust
24 fund including the cost, if any, of the actuarial computations made on
25 behalf of the board, nor shall the state INSURANCE fund be charged with
26 the losses or expenses of the aggregate trust fund beyond the amount of
27 such trust fund. Any portion of such aggregate trust fund may {be
28 invested}, by ORDER OF the commissioners OF THE STATE INSURANCE FUND,
29 {with the approval of} APPROVED BY the superintendent of insurance, BE
30 INVESTED in OR LOANED ON THE PLEDGE OF the same securities as provided
31 in SECTION EIGHTY-SEVEN OF this chapter for the investment of the state

32 insurance fund, and the commissioners may, upon like approval of the
33 superintendent of insurance, also sell any such securities. ANY SECURI-
34 TIES BELONGING TO THE AGGREGATE TRUST FUND MAY BE LOANED BY THE COMMIS-
35 SIONERS OF THE STATE INSURANCE FUND, WITH THE APPROVAL OF THE SUPER-
36 INTENDENT OF INSURANCE, UNDER A SECURITY LOAN AGREEMENT AS PROVIDED BY
37 SECTION EIGHTY-SEVEN OF THIS CHAPTER FOR SECURITIES BELONGING TO THE
38 STATE INSURANCE FUND.

39 S 56. Section 87 of the workers` compensation law, as amended by chap-
40 ter 729 of the laws of 1993, is amended to read as follows:

41 S 87. Investment of surplus or reserve. 1. Any of the surplus or
42 reserve funds belonging to the state insurance fund may, by order of the
43 commissioners, approved by the superintendent of insurance, be invested
44 in or loaned on the pledge of any of the securities in which a savings
45 bank may invest the moneys deposited therein as provided in subdivisions
46 one, two, three, four, five, six, eleven, twelve, twelve-a, thirteen,
47 fourteen, fifteen, nineteen, twenty, twenty-one, twenty-one-a, twenty-
48 four, twenty-four-a, twenty-four-b, twenty-four-c and twenty-five of
49 section two hundred thirty-five of the banking law. THE COMMISSIONERS
50 MAY, UPON LIKE APPROVAL OF THE SUPERINTENDENT OF INSURANCE, ALSO SELL
51 ANY OF SUCH SECURITIES.

52 2. (A) ANY SECURITIES BELONGING TO THE STATE INSURANCE FUND MAY, BY
53 ORDER OF THE COMMISSIONERS, APPROVED BY THE SUPERINTENDENT OF INSURANCE,
54 BE LOANED UNDER A SECURITY LOAN AGREEMENT, AS DEFINED IN PARAGRAPH (B)
55 OF THIS SUBDIVISION, ENTERED INTO WITH A REGISTERED BROKER-DEALER, OR A
56 NEW YORK STATE OR NATIONAL BANK OR TRUST COMPANY, WITH THE CUSTODIAL

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1 BANK OF THE STATE INSURANCE FUND OR ANOTHER PERSON OR ENTITY, APPROVED
2 BY THE COMMISSIONER OF TAXATION AND FINANCE, WHICH SPECIALIZES IN SECUR-
3 RITY LOAN TRANSACTIONS ACTING AS THE AGENT IN ARRANGING SUCH AGREEMENT.
4 THE COMMISSIONERS SHALL MONITOR THE MARKET VALUE OF THE LOANED SECURI-
5 TIES DAILY. IN NO EVENT SHALL THE COMMISSIONERS ALLOW THE VALUE OF THE
6 COLLATERAL POSTED TO FALL BELOW THE MARKET VALUE OF THE LOANED SECURI-
7 TIES.

8 (B) FOR PURPOSES OF THIS SECTION, "SECURITY LOAN AGREEMENT" SHALL
9 MEAN A WRITTEN CONTRACT, THE TERMS OF WHICH HAVE BEEN APPROVED BY THE
10 COMMISSIONER OF TAXATION AND FINANCE, WHEREBY THE STATE INSURANCE FUND
11 (THE LENDER) AGREES TO LEND SECURITIES TO A BROKER-DEALER, BANK OR TRUST
12 COMPANY DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION (THE BORROWER)
13 FOR A PERIOD NOT TO EXCEED ONE YEAR. HOWEVER, SUCH AGREEMENT SHALL BE
14 SUBJECT TO THE FOLLOWING LIMITATIONS: (I) THE LENDER MUST RETAIN THE
15 RIGHT TO COLLECT FROM THE BORROWER ALL DIVIDENDS, INTEREST, PREMIUMS,
16 RIGHTS, AND ANY OTHER DISTRIBUTIONS TO WHICH THE LENDER WOULD OTHERWISE
17 HAVE BEEN ENTITLED; (II) THE LENDER MAY WAIVE THE RIGHT TO VOTE THE

18 SECURITIES DURING THE TERM OF SUCH AGREEMENT; (III) THE LENDER MUST
19 RETAIN THE RIGHT TO TERMINATE SUCH AGREEMENT UPON NOT MORE THAN FIVE
20 BUSINESS DAYS` NOTICE; (IV) THE BORROWER SHALL PROVIDE AS COLLATERAL TO
21 THE LENDER CASH OR DIRECT OBLIGATIONS OF THE UNITED STATES OF AMERICA OR
22 ANY AGENCY OR INSTRUMENTALITY THEREOF OR OBLIGATIONS FULLY GUARANTEED
BY

23 THE UNITED STATES OF AMERICA THAT ARE ELIGIBLE FOR INVESTMENT BY THE
24 STATE INSURANCE FUND UNDER SUBDIVISION ONE OF THIS SECTION, PROVIDED
25 THAT SUCH OBLIGATIONS MAY IN NO EVENT CONSIST OF DERIVATIVE SECURITIES;
26 AND (V) SUCH AGREEMENT SHALL PROVIDE FOR PAYMENT OF ADDITIONAL COLLAT-
27 ERAL ON A DAILY BASIS, OR AT SUCH TIME AS THE VALUE OF THE LOANED SECU-
28 RITIES INCREASES TO AGREED UPON RATIOS.

29 3. All such securities or evidences of indebtedness shall be placed in
30 the hands of the commissioner of taxation and finance who shall be the
31 custodian thereof. He OR SHE shall collect the principal and interest
32 thereof, when due, and pay the same into the state insurance fund. The
33 commissioner of taxation and finance shall pay all vouchers drawn on the
34 state insurance fund for the making of such investments when signed by
35 the chair of the commissioners {of the state insurance fund}, the execu-
36 tive director or A deputy executive director OF THE STATE INSURANCE FUND
37 upon delivery of such securities or evidences of indebtedness to him or
38 her, when there is attached to such vouchers the approval of the state
39 superintendent of insurance. {The commissioners may, upon like approval
40 of the superintendent of insurance, also sell any of such securities. }

41 S 57. Section 20 of the workers` compensation law, as amended by chap-
42 ter 425 of the laws of 1985, is amended to read as follows:

43 S 20. Determination of claims for compensation. 1. At any time
44 after the expiration of the first seven days of disability on the part
45 of an injured employee, or at any time after the employee`s death, a
46 claim for compensation may be presented to the employer or to the
47 {chairman} CHAIR. The board shall have full power and authority to
48 determine all questions in relation to the payment of claims presented
49 to it for compensation under the provisions of this chapter. The
50 {chairman} CHAIR or board shall make or cause to be made such investi-
51 gation as it deems necessary, and upon application of either party,
52 shall order a hearing, and within thirty days after a claim for compen-
53 sation is submitted under this section, or such hearing closed, shall
54 make or deny an award, determining such claim for compensation, and file
55 the same in the office of the {chairman} CHAIR. Immediately after such
56 filing the {chairman} CHAIR shall send to the parties a copy of the

1 decision. Upon a hearing pursuant to this section either party may
2 present evidence and be represented by counsel. The decision of the

3 board shall be final as to all questions of fact, and, except as
4 provided in section twenty-three OF THIS ARTICLE, as to all questions of
5 law. Except as provided in section twenty-seven of this article, all
6 awards of the board shall draw simple interest from thirty days after
7 the making thereof at the rate provided in section five thousand four of
8 the civil practice law and rules. Whenever a hearing or proceeding for
9 the determination of a claim for compensation is begun before a referee,
10 pursuant to the provisions of this chapter, such hearing or proceeding
11 or any adjourned hearing thereon shall continue before the same referee
12 until a final determination awarding or denying compensation, except in
13 the absence, inability or disqualification to act of such referee, or
14 for other good cause, in which event such hearing or proceeding may be
15 continued before another referee by order of the {chairman} CHAIR or
16 board.

17 2. (A) NOTWITHSTANDING SUBDIVISION ONE OF THIS SECTION, ANY CLAIM FOR
18 COMPENSATION BY (I) JUDGES, CONCILIATORS, AND MANAGERIAL OR CONFIDENTIAL
19 EMPLOYEES OF THE WORKERS` COMPENSATION BOARD AND STATE INSURANCE FUND
20 WHO ARE ALLOCATED TO A GRADE M1 OR ABOVE PURSUANT TO SECTION ONE
HUNDRED
21 THIRTY OF THE CIVIL SERVICE LAW, (II) THE CHAIR, VICE-CHAIR AND MEMBERS
22 OF THE WORKERS` COMPENSATION BOARD, AND (III) THE EXECUTIVE DIRECTOR,
23 DEPUTY EXECUTIVE DIRECTORS AND MEMBERS OF THE BOARD OF COMMISSIONERS OF
24 THE STATE INSURANCE FUND SHALL NOT BE WITHIN THE JURISDICTION OF THE
25 WORKERS` COMPENSATION BOARD BUT INSTEAD SHALL BE DETERMINED BY A
NEUTRAL

26 OUTSIDE ARBITRATION PROCESS AS PROVIDED BY REGULATIONS PROMULGATED BY
27 THE CHAIR. SUCH CLAIMS SHALL BE FILED IN THE SAME MANNER AS ANY OTHER
28 CLAIM FOR COMPENSATION UNDER THIS CHAPTER.

29 (B) ALL ISSUES AND QUESTIONS OF LAW OR FACT PERTAINING TO SUCH CLAIMS
30 SHALL BE RESOLVED BY THE ARBITRATOR APPOINTED PURSUANT TO THIS PARA-
31 GRAPH. ARBITRATORS SHALL BE APPOINTED BY THE CHAIR TO ADJUDICATE CLAIMS
32 UNDER THIS PARAGRAPH. SUCH ARBITRATORS SHALL HAVE THE SAME POWERS AND
33 DUTIES AS THOSE ACCORDED REFEREES UNDER THIS CHAPTER, INCLUDING POWERS
34 DELEGATED BY THE CHAIR. THE PROVISIONS OF THIS CHAPTER SHALL BE APPLI-
35 CABLE TO CLAIMS UNDER THIS PARAGRAPH INSOFAR AS THEY ARE NOT INCONSIST-
36 ENT HEREWITH.

37 (C) AN AWARD OR DECISION BY AN ARBITRATOR PURSUANT TO THIS PARAGRAPH
38 IS DEEMED TO BE A FINAL DECISION OF THE BOARD EXCEPT IF REVIEW OF SUCH
39 DECISION IS SOUGHT AS PROVIDED IN PARAGRAPH (D) OF THIS SUBDIVISION. NO
40 MODIFICATION, RESCISSION OR REVIEW OF SUCH AWARD OR DECISION MAY BE
41 ENTERTAINED BY THE BOARD, NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER
42 TO THE CONTRARY.

43 (D) WITHIN THIRTY DAYS AFTER NOTICE OF THE FILING OF AN AWARD OR
44 DECISION BY AN ARBITRATOR, ANY PARTY IN INTEREST MAY REQUEST REVIEW OF
45 THE ARBITRATOR`S DECISION BY A PANEL OF THREE ARBITRATORS IN THE SAME

46 MANNER AND TO THE SAME EXTENT AS THE DECISION BY A REFEREE MAY BE
47 REVIEWED BY THE BOARD PURSUANT TO SECTION TWENTY-THREE OF THIS ARTICLE.
48 THE ARBITRATION PANEL SHALL CONSIST OF ONE ARBITRATOR NOMINATED BY THE
49 CHAIR, ONE ARBITRATOR NOMINATED BY A RECOGNIZED ALTERNATIVE DISPUTE
50 RESOLUTION ORGANIZATION AND ONE ARBITRATOR NOMINATED BY AN EMPLOYEE
51 ORGANIZATION CERTIFIED PURSUANT TO ARTICLE FOURTEEN OF THE CIVIL SERVICE
52 LAW TO REPRESENT THE COLLECTIVE BARGAINING UNIT OF THE INJURED EMPLOYEE
53 OR, IF THE INJURED EMPLOYEE IS NOT REPRESENTED BY A COLLECTIVE BARGAIN-
54 ING UNIT, BY THE RECOGNIZED ALTERNATIVE DISPUTE RESOLUTION ORGANIZATION.
55 A PARTY IN INTEREST MAY SEEK REVIEW OF SUCH AWARD OR DECISION OF AN
56 ARBITRATION PANEL ONLY BY TAKING APPEAL THEREFROM TO THE APPELLATE DIVI-

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1 SION OF THE SUPREME COURT, THIRD DEPARTMENT AND THE COURT OF APPEALS AS
2 PROVIDED FOR DECISIONS OF THE BOARD PURSUANT TO SECTION TWENTY-THREE OF
3 THIS CHAPTER.

4 (E) THE POWERS AND JURISDICTION OF THE ARBITRATION PANEL ESTABLISHED
5 PURSUANT TO THIS SUBDIVISION SHALL BE CONTINUING IN THE SAME MANNER AND
6 TO THE SAME EXTENT AS PROVIDED UNDER THIS CHAPTER TO THE BOARD.

7 (F) ALL FEES, COSTS AND EXPENSES OF ARBITRATION SHALL BE BORNE BY THE
8 BOARD AND THE STATE INSURANCE FUND AS ADMINISTRATION EXPENSES PURSUANT
9 TO SECTIONS EIGHTY-EIGHT AND ONE HUNDRED FIFTY-ONE OF THIS CHAPTER.

10 (G) ANY CLAIM FOR COMPENSATION BY AN OFFICER OR EMPLOYEE OF THE BOARD
11 OR STATE INSURANCE FUND NOT REQUIRED TO BE DETERMINED BY A NEUTRAL
12 OUTSIDE ARBITRATION PROCESS PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVI-
13 SION SHALL BE DETERMINED INITIALLY BY A REFEREE WITH REVIEW OF SUCH
14 DETERMINATION AVAILABLE PURSUANT TO SECTION TWENTY-THREE OF THIS CHAP-
15 TER.

16 (H) FOR ANY CLAIM FOR COMPENSATION BY AN OFFICER OR EMPLOYEE OF THE
17 WORKERS` COMPENSATION BOARD OR THE STATE INSURANCE FUND WHETHER OR
NOT

18 SUCH CLAIM IS REQUIRED TO BE DETERMINED BY A NEUTRAL OUTSIDE ARBITRATION
19 PROCESS PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION, THE REFEREE OR
20 ARBITRATOR MAKING THE INITIAL FINDING OF FACT CONCERNING ANY MEDICAL
21 ISSUE PRESENT IN THE CASE SHALL DEVELOP THE RECORD WITH OPINION EVIDENCE
22 FROM AN IMPARTIAL SPECIALIST WHO IS AN EXPERT IN THE APPROPRIATE MEDICAL
23 SPECIALTY. SUCH IMPARTIAL SPECIALIST SHALL BE SUBJECT TO CROSS-EXAMINA-
24 TION AT THE REQUEST OF ANY PARTY IN INTEREST.

25 (I) THE STATE INSURANCE FUND SHALL ADMINISTER THE CLAIM OF ANY OFFI-
26 CER OR EMPLOYEE OF THE STATE INSURANCE FUND AT AN OFFICE OF THE STATE
27 INSURANCE FUND OTHER THAN THE OFFICE WHICH WAS, AT THE TIME OF INJURY,
28 DISABLEMENT OR DEATH OF SUCH OFFICER OR EMPLOYEE, HIS OR HER PRINCIPAL
29 WORKPLACE.

30 (J) THE CHAIR SHALL PROMULGATE REGULATIONS NECESSARY TO IMPLEMENT

31 THIS SUBDIVISION. SUCH REGULATIONS SHALL INCLUDE PROVISIONS IN RELATION
32 TO THIS SUBDIVISION FOR A SINGLE ARBITRATOR TO DETERMINE A CLAIM IN THE
33 FIRST INSTANCE AND A PANEL OF THREE ARBITRATORS TO REVIEW SUCH DECISION
34 UPON THE APPLICATION OF ANY PARTY IN INTEREST PRIOR TO JUDICIAL REVIEW.
35 SUCH REGULATIONS SHALL ALSO INCLUDE ALL SPECIAL PROCEDURES RELATING TO
36 THE HANDLING OF CLAIMS OF OFFICERS OR EMPLOYEES OF THE WORKERS` COMPEN-
37 SATION BOARD AND THE STATE INSURANCE FUND PURSUANT TO PARAGRAPH (F) OF
38 THIS SUBDIVISION.

39 3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, A
40 MEMBER OF THE WORKERS` COMPENSATION BOARD, A REFEREE OR ANY ARBITRATOR
41 IN CONNECTION WITH THE ADJUDICATION OF ANY CLAIM ARISING UNDER THIS
42 CHAPTER SHALL RECUSE HIMSELF OR HERSELF ON ANY GROUND A JUDGE MAY BE
43 DISQUALIFIED PURSUANT TO SECTION FOURTEEN OF THE JUDICIARY LAW.

44 S 58. Section 110 of the workers` compensation law, as amended by
45 chapter 137 of the laws of 1991, is amended to read as follows:

46 S 110. Record and report of injuries by employers. {Every employer
47 shall keep a record of all injuries, fatal or otherwise, incurred by its
48 employees in the course of their employment.} 1. AN EMPLOYER, OR A
49 THIRD PARTY DESIGNATED BY THE EMPLOYER, SHALL RECORD ANY INJURY OR
50 ILLNESS INCURRED BY ONE OF ITS EMPLOYEES IN THE COURSE OF EMPLOYMENT
51 USING THE FORM PRESCRIBED BY THE CHAIR FOR REPORTING INJURIES UNDER
52 SUBDIVISION TWO OF THIS SECTION. SUCH FORM, A COPY OF WHICH SHALL BE
53 PROVIDED TO THE INJURED EMPLOYEE UPON REQUEST, SHALL BE MAINTAINED BY
54 THE EMPLOYER, OR A THIRD PARTY DESIGNATED BY THE EMPLOYER, FOR AT LEAST
55 EIGHTEEN YEARS, AND SHALL BE SUBJECT TO REVIEW BY THE CHAIR AT ANY TIME.
56 SUCH FORM NEED NOT BE FILED WITH THE CHAIR UNLESS THE STATUS OF SUCH

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1 INJURY OR ILLNESS CHANGES RESULTING IN A LOSS OF TIME FROM REGULAR
2 DUTIES OR IN MEDICAL TREATMENT WHICH WOULD REQUIRE REPORTING IN ACCORD-
3 ANCE WITH SUBDIVISION TWO OF THIS SECTION.

4 2. An employer, OR A THIRD PARTY DESIGNATED BY THE EMPLOYER, shall
5 file with the chair of the workers` compensation board and with the
6 carrier if the employer is insured, upon a form prescribed by the chair,
7 a report {in writing} of any accident resulting in personal injury which
8 has caused or will cause a loss of time from regular duties OF ONE DAY
9 beyond the working day or shift on which the accident occurred, or which
10 has required or will require medical treatment beyond ordinary first aid
11 or more than two treatments by a person rendering first aid. Such
12 report shall state the name and nature of the business of the employer,
13 the location of its establishment or place of work, the name, address
14 and occupation of the injured employee, the time, nature and cause of
15 the injury and such other information as may be required by the chair.
16 {Except as provided in subdivision two of this section, such} SUCH

17 report shall be filed within ten days after the occurrence of the acci-
18 dent. An employer shall furnish a report of an occupational disease
19 incurred by an employee in the course of his or her employment, to the
20 chair of the workers` compensation board, and to the carrier if the
21 employer is insured, upon the same form. The carrier, within fourteen
22 days of receipt of the report or accompanying the initial check
23 forwarded to the employee, whichever is earlier, or a self-insured
24 employer, within fourteen days of {mailing} TRANSMITTING the report to
25 the chair or accompanying the initial check forwarded to the employee,
26 whichever is earlier, shall provide the injured employee or, in the case
27 of death, his or her dependents with a written statement of their rights
28 under this chapter, in a form prescribed by the chair. An employer
29 shall file a report of any other accident resulting in personal injury
30 incurred by {an} ITS employee in the course of {his or her} employment,
31 upon the same form, whenever directed by the chair.

32 {2. Any employer may apply to the chair in writing for a permit to
33 report upon a single form prescribed by the chair all accidents result-
34 ing in personal injury for which a report is required under subdivision
35 one of this section incurred by its employees in the course of their
36 employment within a single calendar month at a single work location
37 which have caused either no loss of time or a loss of time from which
38 the employee has returned to his or her regular employment at his or her
39 regular wages after not more than three days, and where there is no
40 evidence of further disability and no indication for further treatment.
41 As a condition for obtaining such permit, the employer shall set forth
42 in its application such information as shall be required by the chair as
43 to the facilities maintained for the care and treatment of employees,
44 and the manner of keeping records of all injuries, and shall agree to
45 submit promptly full and complete information as to any accidental inju-
46 ry requiring further treatment or whenever directed by the chair. An
47 employer who has been issued a permit by the chair under this section
48 shall file a report with the chair, and with the carrier if the employer
49 is insured, monthly on the prescribed form, within ten days after the
50 last day of the calendar month for which the report is filed, even if no
51 reportable accidents have occurred during such month, and shall file a
52 separate report of accidents for each work location. The chair may
53 revoke for cause any permit issued under this section.}

54 3. ANY INJURY OR ILLNESS WHICH IS NOT REQUIRED TO BE REPORTED IN
55 ACCORDANCE WITH SUBDIVISION TWO OF THIS SECTION, SHALL NOT BE USED AS A
56 BASIS FOR DETERMINING EXPERIENCE MODIFICATION RATES, PROVIDED THE

3 4. An employer who refuses or neglects to make a report OR TO KEEP
4 RECORDS as required by this section shall be guilty of a misdemeanor,
5 punishable by a fine of not more than one thousand dollars. The board
6 or chair may impose a penalty of not more than two thousand five hundred
7 dollars upon an employer who refuses or neglects to make such report.

8 {4} 5. The chair shall be authorized to promulgate regulations neces-
9 sary to carry out the provisions of this section.

10 S 59. Intentionally omitted.

11 S 60. Subdivision 3 of section 125 of the workers` compensation law is
12 REPEALED.

13 S 61. Intentionally omitted.

14 S 62. Subdivision 1 of section 25 of the workers` compensation law,
15 as added by chapter 705 of the laws of 1956, paragraph (a) as amended by
16 chapter 306 of the laws of 1991, paragraphs (d) and (e) as amended by
17 chapter 924 of the laws of 1990 and paragraph (f) as amended by chapter
18 360 of the laws of 1990, is amended to read as follows:

19 1. When no controversy; penalties: failure to notify of cessation of
20 payment; late payment of {instalment} INSTALLMENT. (a) The compensation
21 herein provided for shall be paid periodically and promptly in like
22 manner as wages, and as it accrues, and directly to the person entitled
23 thereto without waiting for an award by the board, including those
24 cases previously established and closed by the board upon receipt of an
25 application to reopen such case, except in those cases in which the
26 right to compensation is controverted by the employer.

27 (b) The first payment of compensation shall become due on the four-
28 teenth day of disability on which date or within four days thereafter
29 all compensation then due shall be paid, and the compensation payable
30 bi-weekly thereafter; but the board may determine that any payments may
31 be made monthly or at any other period, as it may deem advisable.

32 (c) If the employer or insurance carrier does not controvert the
33 injured {workman`s} WORKER`S right to compensation such employer or
34 insurance carrier shall, either on or before the eighteenth day after
35 disability, or within ten days after the employer first has knowledge of
36 the alleged accident, whichever period is the greater, begin paying
37 compensation and shall immediately notify the {chairman} CHAIR in
38 accordance with a form to be prescribed by him, that the payment of
39 compensation has begun, accompanied by the further statement that the
40 employer or insurance carrier, as the case may be, will notify the
41 {chairman} CHAIR when the payment of compensation has been stopped.

42 (d) Whenever for any reason compensation payments cease, the employer
43 or its insurance carrier shall within sixteen days thereafter, send to
44 the chair a notice on a form prescribed by the chair that such payment
45 has been stopped, which notice shall contain the name of the injured
46 employee or his or her principle dependent, the date of accident, the
47 date to which compensation has been paid and the whole amount of compen-

48 sation paid. In case the employer or its insurance carrier fails so to
49 notify the chair of the cessation of payments within sixteen days after
50 the date on which compensation has been paid, the board may impose a
51 penalty upon such employer or its insurance carrier in the amount of
52 {one} THREE hundred {fifty} dollars, which shall be paid {into the state
53 treasury} TO THE CLAIMANT. Such penalty shall be collected in like
54 manner as an award of compensation.

55 (e) If the employer or insurance carrier shall fail to pay any
56 installments of compensation within twenty-five days after the same

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1 become due, there shall be paid by the employer or, if insured, its
2 insurance carrier, an additional amount of twenty percent of the compen-
3 sation then due which shall accrue for the benefit of the injured worker
4 or his or her dependents and shall be paid to him or her or them with
5 the compensation, unless such delay or default is excused by the board
6 upon the application of the employer or insurance carrier upon the
7 ground that owing to conditions over which the employer or insurance
8 carrier had no control, such payment could not be made. The employer in
9 each such instance shall also be assessed the sum of {one} THREE hundred
10 dollars, which shall be paid {into the state treasury} TO THE CLAIMANT.

11 (f) Whenever compensation is withheld solely because a controversy
12 exists on the question of liability as between insurance carriers, sure-
13 ty companies, the special disability fund, the special fund for reopened
14 cases, or an employer, the board may direct that any carrier, surety
15 company, the special disability fund, the special fund for reopened
16 cases shall immediately pay compensation{,} and bills for medical care
17 to the extent payable in accordance with sections thirteen-g, thir-
18 teen-k, thirteen-l and thirteen-m of this chapter, pending determination
19 of such issue. Any such payment or payments shall not be deemed an
20 admission against interest by the carrier, surety company, special disa-
21 bility fund or the special fund for reopened cases. After final deter-
22 mination, the parties shall make the necessary and proper reimbursement
23 including the payment of simple interest at the rate established by
24 section five thousand four of the civil practice law and rules in
25 conformity with such determination.

26 S 63. Subdivision 2 of section 25 of the workers` compensation law, as
27 added by chapter 705 of the laws of 1956, paragraphs (a) and (c) as
28 amended by chapter 465 of the laws of 1988 and the closing paragraph of
29 paragraph (a) as amended by chapter 924 of the laws of 1990, is amended
30 to read as follows:

31 2. Procedure when compensation controverted; penalties: late filing;
32 controversy without just cause. (a) In case the employer decides to
33 controvert the right to compensation, it shall, either on or before the

34 eighteenth day after disability or within ten days after it has know-
35 ledge of the alleged accident, whichever period is the greater, file a
36 notice with the {chairman} CHAIR, on a form prescribed by the {chairman}
37 CHAIR, that compensation is not being paid, giving the name of the
38 claimant, name of the employer, date of the alleged accident and the
39 reason why compensation is not being paid.

40 If the insurance carrier shall fail either to file notice of contro-
41 versy or begin payment of compensation within the prescribed period or
42 within ten days after receipt of a copy of the notice required in
43 section one hundred ten of this chapter, whichever period is the great-
44 er, the board may, after a hearing, impose a penalty in the amount of
45 {one} THREE hundred {fifty} dollars, which shall be in addition to all
46 other penalties provided for in this chapter and shall be paid {into the
47 state treasury} TO THE CLAIMANT. Such penalty shall be collected in
48 like manner as an award of compensation.

49 (b) In the event the board shall notify an employer or his insurance
50 carrier that a {workmen`s} WORKERS` compensation case has been indexed
51 against such employer, and the employer or insurance carrier decides to
52 controvert the right to compensation, a notice of controversy shall be
53 filed with the {chairman} CHAIR within twenty-five days from the date of
54 mailing of a notice that the case has been indexed. Failure to file the
55 notice of controversy within the prescribed twenty-five day time limit
56 shall bar the employer and {his} ITS insurance carrier from pleading

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1 that the injured person was not at the time of the accident an employee
2 of the employer, or that the employee did not sustain an accidental
3 injury, or that the injury did not arise out of and in the course of the
4 employment. However, the board, in the interest of justice, shall,
5 upon the showing of good cause therefor, permit the filing or the amend-
6 ment of a notice of controversy to raise an issue not theretofore raised
7 because of mistake, inadvertence, omission, irregularity, defect or
8 surprise, or based upon newly discovered evidence.

9 (c) If the board shall upon a hearing determine that objections to an
10 award of compensation by the employer or insurance carrier were inter-
11 posed without just cause, it shall state the grounds for such determi-
12 nation and shall require the employer or the insurance carrier to pay to
13 the claimant, in addition to the amount presently due under the award,
14 the sum of {one} THREE hundred {fifty} dollars.

15 S 64. The closing paragraph of subdivision (a) of section 13 of the
16 workers` compensation law, as amended by chapter 363 of the laws of
17 1989, is amended to read as follows:

18 The chair shall prepare and establish a schedule for the state, or
19 schedules limited to defined localities, of charges and fees for such

20 medical treatment and care, to be determined in accordance with and to
21 be subject to change pursuant to rules promulgated by the chair. Before
22 preparing such schedule for the state or schedules for limited locali-
23 ties the chair shall request the president of the medical society of the
24 state of New York to submit to him or her a report on the amount of
25 remuneration deemed by such society to be fair and adequate for the
26 types of medical care to be rendered under this chapter, but consider-
27 ation shall be given to the view of other interested parties. In the
28 case of physical therapy fees schedules the chair shall request the
29 president of a recognized professional association representing physical
30 therapists in the state of New York to submit to him or her a report on
31 the amount of remuneration deemed by such association to be fair and
32 reasonable for the type of physical therapy services rendered under this
33 chapter, but consideration shall be given to the views of other inter-
34 ested parties. The chair shall also prepare and establish a schedule
35 for the state, or schedules limited to defined localities, of charges
36 and fees for outpatient hospital services not covered under the medical
37 fee schedule previously referred to in this subdivision, to be deter-
38 mined in accordance with and to be subject to change pursuant to rules
39 promulgated by the chair. Before preparing such schedule for the state
40 or schedules for limited localities the chair shall request the presi-
41 dent of the hospital association of New York state to submit to him or
42 her a report on the amount of remuneration deemed by such association to
43 be fair and adequate for the types of hospital outpatient care to be
44 rendered under this chapter, but consideration shall be given to the
45 views of other interested parties. In the case of occupational therapy
46 fees schedules the chair shall request the president of a recognized
47 professional association representing occupational therapists in the
48 state of New York to submit to him or her a report on the amount of
49 remuneration deemed by such association to be fair and reasonable for
50 the type of occupational therapy services rendered under this chapter,
51 but consideration shall be given to the views of other interested
52 parties. The amounts payable by the employer for such treatment and
53 services shall be the fees and charges established by such schedule.
54 Nothing in this schedule, however, shall prevent voluntary payment of
55 amounts higher OR LOWER than the fees and charges fixed therein, but no
56 physician rendering medical treatment or care, and no physical or occu-

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1 pational therapist rendering their respective physical or occupational
2 therapy services may receive payment in any higher amount unless such
3 increased amount has been authorized by the employer, or by decision as
4 provided in section thirteen-g {herein} OF THIS ARTICLE. Nothing in
5 this section shall be construed as preventing the employment of a duly

6 authorized physician on a salary basis by an authorized compensation
7 medical bureau or laboratory.

8 S 65. Paragraph (d) of subdivision 2 of section 13-d of the workers`
9 compensation law is REPEALED.

10 S 66. Paragraph (d) of subdivision 10 of section 13-k of the workers`
11 compensation law is REPEALED.

12 S 67. Paragraph (d) of subdivision 10 of section 13-l of the workers`
13 compensation law is REPEALED.

14 S 68. Paragraph (d) of subdivision 11 of section 13-m of the workers`
15 compensation law is REPEALED.

16 S 69. Subdivision 6 of section 126 of the workers` compensation law is
17 REPEALED.

18 S 70. Subdivision 2-b of section 25 of the workers` compensation law,
19 as amended by chapter 285 of the laws of 1994, is amended to read as
20 follows:

21 2-b. Conciliation {bureau}. (a) 1. There is hereby created within the
22 board a conciliation {bureau} PROCESS. {The purpose of such bureau shall
23 be to address claims where the expected duration of benefits is sixteen
24 weeks or less.} The conciliation {bureau} PROCESS will permit {such}
25 claims to be handled on a more expeditious and informal basis and
26 provide a mechanism for claims to be addressed without undue controver-
27 sy.

28 2. {The conciliation bureau} CONCILIATION may also address requests by
29 hospitals, physicians or other health care providers for payment of
30 bills rendered by them in any case, regardless of the expected duration
31 of benefits, pursuant to sections thirteen-g, thirteen-k, thirteen-l and
32 thirteen-m of this article, and regardless of the dollar amount of the
33 bill.

34 (b) Each claim that is filed shall be reviewed for possible transfer
35 {to the} FOR conciliation {bureau}. Claims where the expected duration
36 of benefits is {sixteen} FIFTY-TWO weeks or less shall be transferred
37 {to such bureau} FOR CONCILIATION within thirty days of receipt of a
38 carrier`s response to notice of index required under this section,
39 except uncontested claims where there have been only temporary or minor
40 injuries and where board appearance by the claimant is unnecessary.
41 Such minor and uncontested claims shall be handled through a motion
42 calendar as prescribed by the rules and regulations promulgated pursuant
43 to this section.

44 (c) Upon receipt {by the bureau} of a claim FOR CONCILIATION, a meet-
45 ing shall be scheduled, if necessary, within thirty days with all
46 concerned parties before a CONCILIATION counsel {in the bureau}.

47 (d) All information relative to the claim shall be made available to
48 all parties no later than five days before the meeting. This informa-
49 tion shall include, but not be limited to medical records, wage informa-
50 tion, date of accident or injury and the amount of time lost from work

51 as a result of such accident or injury.

52 (e) {At such meeting, the parties shall discuss the items at issue,
53 including the benefits payable to the claimant. If the claimant is
54 represented by an attorney or licensed representative, he or she shall
55 be entitled to conclude the case, upon satisfactory agreement between
56 all parties on benefits payable, necessary medical care to be provided

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1 and any reimbursements due the claimant. Such agreement shall consti-
2 tute an award of the board for all purposes except that it shall not be
3 reviewable under sections twenty-two and twenty-three of this article.}

4 AT SUCH MEETING THE CONCILIATION COUNSEL SHALL PROMPTLY AND PRIOR TO ANY
5 OTHER PROCEEDING AUTHORIZED UNDER THIS SECTION INFORM ANY CLAIMANT
6 PARTICIPATING IN THE MEETING WITHOUT BENEFIT OF A COUNSEL OR LICENSED
7 REPRESENTATIVE OF THEIR RIGHT TO HAVE REPRESENTATION PRESENT, THEIR
8 RIGHT TO A REASONABLE ADJOURNMENT TO PROCURE REPRESENTATION, OF THEIR
9 RIGHT TO WITHDRAW FROM ANY AGREEMENT AT SUCH MEETING IN ACCORDANCE
WITH

10 SUBDIVISION (G) OF THIS SECTION AND SUCH OTHER AND FURTHER INFORMATION
11 AS THE CHAIR MAY REQUIRE TO INSURE THAT AN UNCOUNSELLED CLAIMANT FULLY
12 UNDERSTANDS THE CONCILIATION PROCESS. AFTER INFORMING CLAIMANT IN
13 ACCORDANCE WITH THIS SUBDIVISION, CONCILIATION COUNSEL SHALL REQUEST A
14 WRITTEN CONSENT TO PARTICIPATE IN THE CONCILIATION PROCESS FROM CLAIM-
15 ANT, AND IF SUCH CLAIMANT DECLINES TO CONTINUE, SHALL IMMEDIATELY CEASE
16 THE CONCILIATION PROCESS AND CAUSE THE CLAIM TO BE RESTORED TO THE REGU-
17 LAR HEARING CALENDAR PROCESS.

18 (F) AFTER REVIEWING ALL RELEVANT INFORMATION, CONCILIATION COUNSEL
19 SHALL PREPARE A PROPOSED DECISION WHICH SHALL BE SENT TO ALL PARTIES.
20 ANY PARTY MAY OBJECT TO THE PROPOSED DECISION AND REQUEST A HEARING
21 WITHIN THIRTY DAYS OF THE RECEIPT OF THE PROPOSED DECISION. IF NO
22 OBJECTION IS MADE DURING SUCH THIRTY DAY PERIOD THE PROPOSED DECISION
23 SHALL CONSTITUTE A FINAL AWARD OF THE BOARD FOR ALL PURPOSES EXCEPT THAT
24 IT SHALL NOT BE REVIEWABLE UNDER SECTIONS TWENTY-TWO AND TWENTY-THREE
OF

25 THIS ARTICLE. IF ANY PARTY OBJECTS TO THE PROPOSED DECISION, THE CASE
26 SHALL BE TRANSFERRED TO THE REGULAR HEARING CALENDAR PROCESS.

27 {(f)} (G) If a claimant shall be unrepresented, the case shall not be
28 agreed to until it shall have been reviewed and approved by the chair or
29 a referee of the board designated by the chair. Such decision shall be
30 rendered within fifteen days of receipt of the agreement from the
31 conciliation bureau; provided, however, that a claimant shall have ten
32 days from receipt of notice of such approval to withdraw from the agree-
33 ment. If approved, such agreement shall constitute an award of the
34 board for all purposes except that it shall not be reviewable under

35 sections twenty-two and twenty-three of this article. Should the agree-
36 ment be disapproved or should the claimant withdraw from the agreement
37 as provided herein, the case shall be transferred to the regular hearing
38 calendar process.

39 {(g) Upon agreement by all parties,} (H) AFTER THE PROPOSED DECISION
40 HAS BECOME FINAL, the carrier shall make payments of any award as
41 required in the {conciliation agreement} DECISION within ten days {of
42 the date of the approval of the agreement and shall immediately notify
43 the chair in accordance with a form to be prescribed by him or her that
44 payment of compensation has been made}. If, however, the carrier does
45 not make the payments as required in the {agreement} DECISION within ten
46 days of the date {of} IN WHICH the {approval of the agreement} PROPOSED
47 DECISION BECOMES FINAL, the chair shall impose of a fine of five hundred
48 dollars for failure to live up to the terms of the {agreement} DECISION
49 upon verification that payment has not been timely made. Of that
50 amount, three hundred dollars shall be made payable to the claimant and
51 two hundred dollars shall be payable to the board for the operation and
52 administration of this chapter.

53 {(h)} (I) If, in any case which has been addressed by {the} concil-
54 iation {bureau}, the claimant requires additional medical care beyond
55 that agreed to or requires benefit payments beyond that agreed to, the
56 meeting, if necessary, shall be reconvened within thirty days from the

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1 receipt of information demonstrating the need for additional medical
2 care or benefit payments. If it is determined that the claimant`s
3 condition may continue for a period of time which is more than six
4 months, such case shall be reopened and transferred to the regular hear-
5 ing calendar. If, however, it is determined, based on medical evidence,
6 that the claimant`s condition will improve in less than six months, the
7 case shall remain {with the} IN conciliation {bureau}.

8 S 71. Paragraph (d) of subdivision 3 of section 25 of the workers`
9 compensation law, as added by chapter 924 of the laws of 1990, is
10 amended to read as follows:

11 (d) If, in any case, the issues have not been resolved within two
12 years after such issues have been raised before the board, OR IF MULTI-
13 PLE CLAIMS ARISE FROM THE SAME ACCIDENT OR OCCURRENCE, OR IF ALL PARTIES
14 AGREE TO AN EXPEDITED HEARING, OR IF THE CHAIR OTHERWISE DEEMS IT NECES-
15 SARY, the {referee shall, unless such unresolved issues are inappropri-
16 ate for this procedure, or shall, upon motion of any party,} CHAIR MAY
17 order that the case be transferred to a special part for expedited hear-
18 ings{, to be heard by a referee assigned to such cases. Provided,
19 however, no case in which maximum medical improvement has not been
20 reached shall be transferred to the special part}. Proceedings in such

21 part shall be conducted in an expedited manner.

22 Cases in such special part shall be scheduled in such a manner so
23 that, WHERE APPROPRIATE, any and all outstanding issues may be addressed
24 at one hearing. {Any adjournment except in case of an emergency, must
25 be approved by a supervising judge.} An adjourned case shall be
26 rescheduled as soon as practicable, but no later than thirty days
27 following such adjournment.

28 If a request for an adjournment is made by a carrier or employer which
29 is not an emergency and is deemed to be frivolous by the chair, a penal-
30 ty of one thousand dollars shall be imposed by the chair. IF SUCH
31 EMPLOYER OR CARRIER IS REPRESENTED BY AN ATTORNEY OR LICENSED REPRESENTATIVE WHO IS NOT AN EMPLOYEE OF THE CARRIER OR EMPLOYER, THE ATTORNEY
32 OR LICENSED REPRESENTATIVE SHALL BE RESPONSIBLE FOR THE PAYMENT OF SUCH
33 PENALTY. If a request for an adjournment is made by a claimant who is
34 represented by an attorney or a licensed representative which is not an
35 emergency and is deemed to be frivolous by the chair, a penalty of five
36 hundred dollars shall be imposed by the chair on the attorney or
37 licensed representative. Such penalty shall be paid by the attorney or
38 licensed representative and shall not come out of the claimant's award.
39 No penalty shall be imposed on an unrepresented claimant who requests an
40 adjournment.
41 adjournment.

42 S 72. Subdivision 2-a of section 25 of the workers' compensation law,
43 as amended by chapter 285 of the laws of 1994, is amended to read as
44 follows:

45 2-a. Pre-hearing conference. (a) In any controverted case, upon
46 receipt of the notice of controversy, the board shall schedule a pre-
47 hearing conference before a referee OR CONCILIATOR as soon as practica-
48 ble but not to exceed sixty days after receipt of notice of controversy.
49 The board shall give notice of the pre-hearing conference to all
50 parties. A party may appear at such conference pro se, or by an attor-
51 ney or licensed representative or other representative authorized by the
52 board to appear on behalf of such party.

53 (b) The {referee shall consider at the conference with the parties or
54 their authorized representative} PURPOSE OF THE CONFERENCE SHALL BE TO
55 CONSIDER the following:

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- 1 (i) confirmation that all appropriate forms, including medical
- 2 reports, have been submitted and a verification that all information on
- 3 the forms is accurate;
- 4 (ii) addition of any other necessary parties, where appropriate;
- 5 (iii) simplification and limitation of factual and legal issues, where
- 6 appropriate;
- 7 (iv) presentation of a list of proposed witnesses, where appropriate;

8 (v) scheduling the case for a hearing; and
9 (vi) entering into a stipulation {establishing accident, notice and
10 causal relationship or establishing occupational disease}.

11 (c) THE REFEREE OR CONCILIATOR MAY CONTINUE THE CONFERENCE AND ORDER
12 THE PRODUCTION OF ANY NECESSARY REPORTS, INCLUDING, WHERE APPROPRIATE,
13 AN EXAMINATION BY A CARRIER`S CONSULTANT. At the conclusion of the
14 conference, the referee {shall} OR CONCILIATOR MAY issue a written
15 order. The referee OR CONCILIATOR may, upon agreement of all parties,
16 issue a decision which shall constitute a decision of the board for all
17 purposes. If a claimant shall be unrepresented, a decision issued by a
18 referee upon agreement of all parties at a pre-hearing conference shall
19 not become final until it shall have reviewed and approved by the chair
20 or a referee of the board designated by the chair. Such review by the
21 chair or an employee of the board so designated shall occur no later
22 than fourteen days from the date the proposed decision is submitted for
23 review and approval. The unrepresented claimant shall have ten days
24 from receipt of notice of such approval to withdraw from the agreement.
25 If not withdrawn, such agreement shall constitute an award of the board
26 for all purposes. Upon receipt of written notification of such with-
27 drawal by the unrepresented claimant, the board shall rescind the deci-
28 sion made by the referee and restore the case to the regular hearing
29 calendar process. SUCH DECISION SHALL CONSTITUTE A DECISION OF THE
30 BOARD FOR THE PURPOSES OF SECTION TWENTY-THREE OF THIS ARTICLE.

31 (d) In cases where the claimant is represented by an attorney or a
32 licensed representative, ten days before the conference, each party
33 shall file a conference statement noting the specific issues in dispute,
34 including the information required in paragraph (b) of this subdivision.
35 Discovery shall close {on the date} AT THE END of the pre-hearing
36 conference. Evidence not disclosed or obtained thereafter shall not be
37 admissible unless the proponent of the evidence can demonstrate that it
38 was not available or could not have been discovered by the exercise of
39 due diligence prior to the conference. If a claimant is unrepresented,
40 the carrier shall file such a statement.

41 (e) Proceedings in the pre-hearing part shall be conducted in accord-
42 ance with the rules promulgated by the chair or the board.

43 S 73. Section 32 of the workers` compensation law is amended to read
44 as follows:

45 S 32. Waiver agreements {void}. No agreement OR RELEASE EXCEPT AS
46 OTHERWISE PROVIDED IN THIS CHAPTER by an employee to waive his right to
47 compensation under this chapter shall be valid.

48 (A) WHENEVER A CLAIM HAS BEEN FILED, THE CLAIMANT OR THE DECEASED
49 CLAIMANT`S DEPENDENTS AND THE EMPLOYER OR HIS CARRIER MAY ENTER INTO AN
50 AGREEMENT SETTLING UPON AND DETERMINING THE COMPENSATION AND OTHER
BENE-

51 FITS DUE TO THE CLAIMANT OR THEIR DEPENDENTS. THE AGREEMENT SHALL NOT

52 BIND THE PARTIES TO IT, UNLESS IT IS APPROVED BY THE BOARD. SUCH AGREE-
53 MENTS, WHEN SO APPROVED, NOTWITHSTANDING ANY OTHER PROVISIONS, SHALL BE
54 FINAL AND CONCLUSIVE UPON THE CLAIMANT, THE CLAIMANTS DEPENDENTS, THE
55 EMPLOYER AND THE INSURANCE CARRIER.

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1 (B) THE AGREEMENT SHALL BE APPROVED BY THE BOARD IN A DECISION DULY
2 FILED AND SERVED UNLESS:

3 (1) THE BOARD FINDS THE PROPOSED AGREEMENT UNFAIR, UNCONSCIONABLE, OR
4 IMPROPER AS A MATTER OF LAW;

5 (2) THE BOARD FINDS THAT THE PROPOSED AGREEMENT IS THE RESULT OF AN
6 INTENTIONAL MISREPRESENTATION OF MATERIAL FACT; OR,

7 (3) WITHIN TEN DAYS OF SUBMITTING THE AGREEMENT ONE OF THE INTERESTED
8 PARTIES REQUESTS THAT THE BOARD DISAPPROVE THE AGREEMENT.

9 (C) A DECISION DULY FILED AND SERVED APPROVING AN AGREEMENT SUBMITTED
10 TO THE BOARD SHALL NOT BE SUBJECT TO REVIEW PURSUANT TO SECTION TWENTY-
11 THREE OF THIS ARTICLE. HOWEVER, A DECISION DULY FILED AND SERVED DISAP-
12 PROVING AN AGREEMENT SUBMITTED TO THE BOARD IS SUBJECT TO REVIEW PURSU-
13 ANT TO SECTION TWENTY-THREE OF THIS ARTICLE. IF THE BOARD DISAPPROVES
14 OF AN AGREEMENT IT SHALL DULY FILE AND SERVE A NOTICE OF DECISION
15 SETTING ASIDE THE PROPOSED AGREEMENT.

16 (D) AN AGREEMENT FOR COMPENSATION AND OTHER BENEFITS COVERED BY THIS
17 CHAPTER MAY BE MODIFIED AT ANYTIME BY AGREEMENT OF ALL INTERESTED
18 PARTIES PROVIDED IT IS APPROVED BY THE BOARD.

19 S 74. Intentionally omitted.

20 S 75. Section 23 of the workers` compensation law, as amended by chap-
21 ter 924 of the laws of 1990, is amended to read as follows:

22 S 23. Appeals. An award or decision of the board shall be final and
23 conclusive upon all questions within its jurisdiction, as against the
24 state fund or between the parties, unless reversed or modified on appeal
25 therefrom as hereinafter provided. {If any} ANY party {shall} MAY with-
26 in thirty days after notice of the filing of an award or decision of a
27 referee, {make} FILE WITH THE BOARD an application in writing {to the
28 board} for a modification or rescission or review of such award or deci-
29 sion, as provided in this chapter{, the}. THE board shall {make} RENDER
30 its decision upon such application in writing and shall include in such
31 decision a statement of the facts which formed the basis of its action
32 on the issues raised before it on such application. Within thirty days
33 after notice of the decision of the board upon such application has been
34 served upon the parties, or within thirty days after notice of an admin-
35 istrative redetermination review decision by the chair pursuant to
36 subdivision five of section fifty-two of this chapter has been served
37 upon any party in interest, an appeal may be taken therefrom to the
38 appellate division of the supreme court, third department, by any party

39 in interest, including an employer insured in the state fund; provided,
40 however, that if the decision or determination was that of a panel of
41 the board and there was a dissent from such decision or determination
42 other than a dissent the sole basis of which is to refer the case to an
43 impartial specialist, any party in interest may within thirty days after
44 notice of the filing of the board panel`s decision with the secretary of
45 the board, make application in writing for review thereof by the full
46 board, and the full board shall review and affirm, modify or rescind
47 such decision or determination in the same manner as herein above
48 provided for an award or decision of a referee. Failure to apply for
49 such review by the full board shall not bar any party in interest from
50 taking an appeal directly to the court as above provided. The board may
51 also, in its discretion certify to such appellate division of the
52 supreme court, questions of law involved in its decision. Such appeals
53 and the question so certified shall be heard in a summary manner and
54 shall have precedence over all other civil cases in such court. The
55 board shall be deemed a party to every such appeal from its decision
56 upon such application, and the chair shall be deemed a party to every

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1 such appeal from an administrative redetermination review decision
2 pursuant to subdivision five of section fifty-two of this chapter. The
3 attorney general shall represent the board and the chair thereon. An
4 appeal may also be taken to the court of appeals in the same manner and
5 subject to the same limitations not inconsistent herewith as is now
6 provided in the civil practice law and rules. It shall not be necessary
7 to file exceptions to the rulings of the board. An appeal to the appel-
8 late division of the supreme court, third department, or to the court of
9 appeals, shall not operate as a stay of the payment of compensation
10 required by the terms of the award or of the payment of the doctors`
11 bills found to be fair and reasonable. Where such award is modified or
12 rescinded upon appeal, the appellant shall be entitled to reimbursement
13 in a sum equal to the compensation in dispute paid to the respondent in
14 addition to a sum equal to the amount of the doctors` bills paid by the
15 appellant pending adjudication of the appeal. Such reimbursement shall
16 be paid from administration expenses as provided in section one hundred
17 fifty-one of this chapter upon audit and warrant of the comptroller upon
18 vouchers approved by the chair. Where such award is subject to the
19 provisions of section twenty-seven of this article, the appellant shall
20 pay directly to the claimant all compensation as it becomes due during
21 the pendency of the appeal, and upon affirmance shall be entitled to
22 credit for such payments. Neither the chair, the board, the commission-
23 ers of the state insurance fund nor the claimant shall be required to
24 file a bond upon an appeal to the court appeals. Upon final determi-

25 nation of such an appeal, the board or chair, as the case may be, shall
26 enter an order in accordance therewith. Whenever a notice of appeal is
27 served or an application made to the board by the employer or insurance
28 carrier for a modification or rescission or review of an award or deci-
29 sion, and the board shall find that such notice of appeal was served or
30 such application was made for the purpose of delay or upon frivolous
31 grounds, the board shall impose a penalty in the amount of two hundred
32 fifty dollars upon the employer or insurance carrier, which penalty
33 shall be added to the compensation and paid to the claimant. The penal-
34 ties provided herein shall be collected in like manner as compensation.
35 A party against whom an award of compensation shall be made may appeal
36 from a part of such award. In such a case the payment of such part of
37 the award as is not appealed from shall not prejudice any rights of such
38 party on appeal, nor be taken as an admission against such party. Any
39 appeal by an employer from an administrative redetermination review
40 decision pursuant to subdivision five of section fifty-two of this chap-
41 ter shall in no way serve to relieve the employer from the obligation to
42 timely pay compensation and benefits otherwise payable in accordance
43 with the provisions of this chapter.
44 Nothing herein contained shall be construed to inhibit the continuing
45 jurisdiction of the board as provided in section one hundred twenty-
46 three of this chapter.
47 S 76. Intentionally omitted.
48 S 77. The superintendent of insurance, in consultation with the
49 commissioner of labor and the chair of the workers` compensation board,
50 shall conduct a study of the role of rating organizations in the estab-
51 lishment of workers` compensation insurance rates including, but not
52 limited to, the composition and function of the New York Compensation
53 Insurance Rating Board in the establishment of workers` compensation
54 insurance rates in this state, and shall report the findings of such
55 study within 180 days of the effective date of this section to the
56 governor, the majority leader of the senate and the speaker of the

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1 assembly. In such study, the superintendent, the commissioner and the
2 chair shall also evaluate the workers` compensation insurance rate-mak-
3 ing process including, but not limited to, an evaluation of the nature
4 and number of rating classifications, the areas of territorial differen-
5 tials, the feasibility of an open-rating process, and the feasibility of
6 an appeal process by which insureds may redress concerns of misclassi-
7 fications of risks and make such recommendations as they deem appropri-
8 ate for modification of the rate making process.

9 S 78. Section 2313 of the insurance law is amended by adding a new
10 subsection (r) to read as follows:

11 (R) A RATE SERVICE ORGANIZATION LICENSED PURSUANT TO THIS SECTION
12 WHICH FILES RATES, RATING PLANS OR OTHER STATISTICAL INFORMATION PURSU-
13 ANT TO PARAGRAPH ONE OF SUBSECTION (B) OF SECTION TWO THOUSAND THREE
14 HUNDRED FIVE OF THIS ARTICLE OR OTHERWISE RELATING TO OR IN SUPPORT OF
15 COVERAGES WRITTEN BY ITS MEMBERS OR SUBSCRIBERS PURSUANT TO PARAGRAPH
16 FIFTEEN OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN
17 OF THIS CHAPTER SHALL BE SUBJECT TO AUDIT BY THE SUPERINTENDENT BY
18 DECEMBER THIRTY-FIRST, NINETEEN HUNDRED NINETY-SEVEN AND NOT LESS THAN
19 ONCE EVERY THREE YEARS THEREAFTER. SUCH AUDIT SHALL EXAMINE THE
20 FINANCES AND OPERATIONS OF SUCH RATING ORGANIZATION AND SHALL FURTHER
21 MAKE RECOMMENDATIONS FOR ACTIONS TO BE TAKEN BY SUCH RATING
ORGANIZATION

22 IN FURTHERANCE OF THE FINDINGS OF SUCH AUDIT. THE SUPERINTENDENT SHALL
23 COMPLETE AN AUDIT REPORT NO LATER THAN SIXTY DAYS AFTER THE CONCLUSION
24 OF THE AUDIT PERIOD AND SHALL SUBMIT SUCH AUDIT REPORT TO THE GOVERNOR
25 AND THE LEGISLATURE.

26 S 79. Section 142 of the workers` compensation law is amended by
27 adding a new subdivision 6 to read as follows:

28 6. THE WORKERS` COMPENSATION BOARD SHALL NOT RELEASE ANY INFORMATION
29 ACQUIRED PURSUANT TO SECTION FIVE HUNDRED THIRTY-SEVEN OF THE LABOR LAW
30 AND SECTION ONE HUNDRED SEVENTY-ONE-A OF THE TAX LAW UNLESS THE RELEASE
31 OF SUCH INFORMATION IS REQUIRED TO FURTHER FRAUD CONTROL ACTIVITIES
32 UNDERTAKEN BY THE WORKERS` COMPENSATION BOARD PURSUANT TO THIS

CHAPTER,

33 IN WHICH CASE RELEASE OF SUCH INFORMATION SHALL BE SUBJECT TO THE
34 RESTRICTIONS CONTAINED IN SECTION FIVE HUNDRED THIRTY-SEVEN OF THE LABOR
35 LAW AND SECTION ONE HUNDRED SEVENTY-ONE-A OF THE TAX LAW.

36 S 80. The superintendent of insurance is directed to conduct a study
37 of the workers` compensation rate making process and such other public
38 outreach as is appropriate. An initial report shall be issued for public
39 comment on or before May 1, 1997 and a final report on or before Decem-
40 ber 1, 1997. Such study shall, among other matters properly pertaining
41 thereto, contain an analysis and explanation of workers` compensation
42 losses, assessments, expenses, investment income (and the allocation
43 thereof) and rates of return including an apportionment by premium
44 dollars.

45 S 81. Section 402 of the insurance law is amended by adding a new
46 subdivision (c) to read as follows:

47 (C) THE SUPERINTENDENT IS AUTHORIZED TO ESTABLISH WITHIN THE INSURANCE
48 FRAUDS BUREAU ONE OR MORE UNITS DESIGNATED FOR THE PURPOSE OF INVESTI-
49 GATING AND PREVENTING FRAUD IN CERTAIN SPECIFIED AREAS OF THE BUSINESS
50 OF INSURANCE, AND SHALL ESTABLISH SUCH A UNIT FOR WORKERS` COMPENSATION
51 INSURANCE FRAUDS INVESTIGATIONS. THE SUPERINTENDENT SHALL DESIGNATE NOT
52 LESS THAN TEN EMPLOYEES AS PEACE OFFICERS PURSUANT TO SUBDIVISION (B) OF
53 THIS SECTION AS STAFF OF SUCH UNIT. THE SUPERINTENDENT SHALL ASSIGN NOT

54 LESS THAN TWO OF THE PEACE OFFICERS DESIGNATED PURSUANT TO THIS SECTION
55 TO THE FRAUD INVESTIGATION UNIT OF THE STATE INSURANCE FUND FOR SUCH
56 PERIODS AS THE SUPERINTENDENT SHALL DETERMINE FOR THE PURPOSE OF DEVEL-

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1 OPING AND IMPLEMENTING THE STATE INSURANCE FUND'S FRAUD PREVENTION AND
2 DETECTION ACTIVITIES.

3 S 82. The insurance law is amended by adding a new section 407-a to
4 read as follows:

5 S 407-A. SPECIAL FRAUD STUDIES. THE INSURANCE FRAUDS BUREAU SHALL
6 UNDERTAKE A STUDY OF TRENDS IN THE INCIDENCE OF FRAUDS AND IN THE METH-
7 ODOLOGIES OF FRAUD DETECTION AND PREVENTION IN THE AREA OF WORKERS`
8 COMPENSATION INSURANCE. SUCH STUDY SHALL UTILIZE AVAILABLE DATA AND
9 EXPERTS FROM THE AREA TO BE STUDIED. SUCH STUDY SHALL ALSO CONTAIN A
10 REVIEW AND ASSESSMENT OF THE EFFICACY OF UTILIZATION REVIEW PRACTICES
11 AND PROTOCOLS IN THE INVESTIGATION OF FRAUDULENT ACTIVITIES. THE SUPER-
12 INTENDENT SHALL SUBMIT A REPORT ON SUCH STUDY TO THE GOVERNOR AND LEGIS-
13 LATURE NO LATER THAN AUGUST FIRST, NINETEEN HUNDRED NINETY-SEVEN.

14 S 83. 1. Using existing resources, the chair of the workers` compen-
15 sation board shall study the status of women applying for and receiving
16 workers` compensation benefits. The chair shall conduct such study in
17 consultation with the division for women, the New York committee on
18 occupational health and safety, the Mount Sinai medical center Irving J.
19 Selikoff occupational health clinical center, the New York state school
20 for industrial and labor relations at Cornell university`s institute for
21 women in work, labor organizations, business groups and members of the
22 public. Such study shall include a review of case histories in which
23 workers` compensation was sought for injuries or occupational disease
24 suffered by women. Such study shall set forth the number and percentage
25 of the proportion of controverted cases presented by women that were
26 adjudicated in favor of the claimant. Such study shall include an analy-
27 sis of the length of time for adjudication of claims. Such study shall
28 also compare the disability status of women at the time the workers`
29 compensation claim was filed and at the time of adjudication.

30 2. A copy of such study shall be transmitted to the governor, the
31 temporary president of the senate, the speaker of the assembly and the
32 chairs of the respective labor committees on or before April 15, 1997.

33 S 84. The chair of the workers` compensation board shall implement a
34 study of the incidence of stress claims filed with the board, and the
35 adequacy of existing law and definitions regarding issues of adjudi-
36 cation and eligibility. The chair will solicit input from organizations
37 representing business including the Business Council, and from organiza-
38 tions representing organized labor including the AFL-CIO, and shall
39 accept input from groups representing injured workers, medical provid-

40 ers, concerned citizens and others.

41 This study shall be delivered to the governor, the temporary president
42 of the senate, the speaker of the assembly, and the chairs of the labor
43 committees of the senate and assembly on or before September 15, 1997.

44 S 85. The chair of the workers` compensation board shall implement a
45 study of occupational disease. The study shall examine existing law and
46 the adequacy of existing law and definitions regarding issues of adjudi-
47 cation and eligibility and controversion. It shall determine the inci-
48 dence of occupational disease, its impact and presence in certain indus-
49 tries, including but not limited to the garment industry, the publishing
50 industry, the utility industry, and the sanitation and waste removal
51 industries.

52 The chair shall conduct such study in consultation with the Mt. Sinai
53 Medical Center Irving J. Selikoff Occupational Health Clinical Center,
54 the Bellevue/NYU Occupational and Environmental Health Clinic, the vari-
55 ous regional occupational health and safety committees and any other
56 interested parties or concerned citizens.

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1 A copy of the study shall be completed and transmitted to the gover-
2 nor, the temporary president of the senate, the speaker of the assembly
3 and the chairs of the respective labor committees on or before January
4 15, 1998.

5 S 86. Section 76 of the workers` compensation law is amended by adding
6 a new subdivision 5 to read as follows:

7 5. NO MONIES OF THE STATE INSURANCE FUND SHALL BE TRANSFERRED TO ANY
8 OTHER FUND, NOR SHALL ANY SUCH MONIES BE APPLIED TO THE MAKING OF ANY
9 PAYMENT FOR ANY PURPOSE OTHER THAN THE PURPOSES SET FORTH IN THIS ARTI-
10 CLE.

11 S 87. Notwithstanding any other provision of law to the contrary the
12 superintendent of insurance shall establish a special assessment on all
13 workers` compensation insurance carriers licensed pursuant to paragraph
14 3 of subsection (a) of section 1113 of the insurance law and the state
15 insurance fund at such times and in such manner as will be prescribed by
16 the superintendent of insurance but no later than December 31, 1996. The
17 aggregate total of such special assessment shall be \$98,000,000, and
18 each individual special assessment shall be equivalent to the insurer`s
19 estimated proportionate share of total as submitted to the New York
20 state insurance department in each annual statement which has been filed
21 on or before March, 1996 for the most recent business year. All amounts
22 collected pursuant to such special assessment shall be deposited in the
23 general fund of the state no later than March 1, 1997 in a manner
24 prescribed by the superintendent.

25 S 88. (a) The superintendent of insurance is hereby directed to

26 perform an audit of all workers` compensation insurance carriers
27 licensed to do business in this state pursuant to paragraph 3 of
28 subsection (a) of section 1113 of the insurance law and the state insur-
29 ance fund, to determine the value as of December 31, 1996 of any
30 reduction in reserves, hereinafter referred to as the reserve adjust-
31 ment, required to be established for losses or claims pursuant to
32 section 1303 of the insurance law and, concerning the state insurance
33 fund, section 88 of the workers` compensation law that result from the
34 application of provisions established pursuant to sections two through
35 nine of this act and the application of section 90 to these provisions.
36 The reserve adjustment shall be an obligation of each carrier and the
37 state insurance fund and shall be payable by each such carrier and the
38 state insurance fund to the superintendent of insurance as a special
39 charge consistent with a payment schedule developed by the superinten-
40 dent.

41 (b) Upon completion of the audit the superintendent of insurance shall
42 develop a reconciliation report of all amounts due pursuant to subdivi-
43 sion (a) of this section, and of any credits and outstanding liabilities
44 of insurers under this section for amounts paid under the special
45 assessment pursuant to section one hundred ten of this act. The super-
46 intendent of insurance shall report his findings to the comptroller who
47 shall certify such results. Payors to whom a credit from payments made
48 pursuant to section one hundred ten of this act is due to the state
49 shall take such as a credit against current or future liabilities to the
50 state or shall request a refund of such certified amounts upon applica-
51 tion to the comptroller. Payors for whom outstanding liabilities with
52 respect to and after consideration of payments made pursuant to section
53 one hundred ten of this act have been certified shall remit such amounts
54 immediately upon certification to the superintendent and deposited in
55 the general fund in manner prescribed by the superintendent. Such
56 reconciliation report shall include the method and amounts of payments

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1 made by the state to insurers under this section for any credits and
2 funds received by the state for outstanding liabilities of insurers
3 under this section.

4 S 89. Severability. If any clause, sentence, paragraph, section or
5 part of this act shall be adjudged by any court of competent jurisdic-
6 tion to be invalid, such judgment shall not affect, impair or invalidate
7 the remainder thereof, but shall be confined in its operation to the
8 clause, sentence, paragraph, section or part thereof directly involved
9 in the controversy in which such judgment shall have been rendered.

10 S 90. This act shall take effect immediately; sections ten and eleven
11 of this act shall take effect 120 days after it shall have become a law;

12 section twenty-five of this act shall take effect on the sixtieth day
13 after it shall have become a law; that the amendments to section 126 of
14 the workers` compensation law made by this act shall be repealed on the
15 same date as provided for in chapter 729 of the laws of 1993, as
16 amended; section thirty-six of this act shall take effect January 1,
17 1997, provided, however, that any rules and regulations necessary for
18 the timely implementation of these provisions shall be promulgated
19 before such date; section thirty-nine of this act shall take effect
20 immediately except that the provision relating to paragraph (h) of
21 subdivision 8 of section 15 of the workers` compensation law shall take
22 effect January 1, 1997; sections forty-nine through fifty-one of this
23 act shall take effect immediately and shall be deemed to have been in
24 full force and effect on and after April 1, 1996, but shall not apply to
25 any and all appropriations or expenditures enacted for the fiscal year
26 ending March 31, 1995; moreover, any appropriations made for the fiscal
27 year commencing April 1, 1996 shall immediately cease to have force and
28 effect; section fifty-seven of this act shall take effect 180 days after
29 it shall have become a law and shall apply to all claims pending on or
30 after such date; section fifty-eight of this act shall take effect 90
31 days after it shall have become a law; section sixty of this act shall
32 apply to discrimination claims filed on or after the date on which it
33 shall have become a law; section seventy of this act shall take effect
34 120 days after it shall have become a law; section seventy-one of this
35 act shall take effect January 1, 1997 and shall apply to all new claims
36 filed after such date; section seventy-two of this act shall take effect
37 60 days after it shall have become a law section seventy-three of this
38 act shall take effect 90 days after it shall have become a law; section
39 seventy-nine of this act shall take effect September 1, 1997 and shall
40 apply to all claims filed on or after such date; provided, however, that
41 nothing contained herein shall be deemed to affect the application,
42 qualification, expiration, reversion or repeal of any provision of law
43 amended by any section of this act and the provisions of this act shall
44 be applied or qualified or shall expire or revert or be deemed repealed
45 in the same manner, to the same extent and on the same date as the case
46 may be as otherwise provided by law.

STATE OF NEW YORK

11338

IN ASSEMBLY

July 12, 1996

Introduced by COMMITTEE ON RULES -- read once and referred to the Committee on Ways and Means

AN ACT to amend a chapter of the laws of 1996 amending the workers' compensation law relating to workers' compensation reform, as added by legislative bill S. 7951 or A. 11331, in relation to making a technical correction thereto

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

- 1 Section 1. Section 87 of a chapter of the laws of 1996, amending the workers' compensation law relating to
2 workers' compensation reform, as added by legislative bill S. 7951 or A. 11331 is amended to read as follows: §
3 87. Notwithstanding any other provision of law to the contrary the superintendent of insurance shall establish a
4 special assessment on all workers' compensation insurance carriers licensed pursuant to paragraph 3 of
5 subsection (a) of section 1113 of the insurance law and the state insurance fund at such times and in such manner
6 as will be prescribed by the superintendent of insurance but no later than December 31, 1996. The aggregate
7 total of such special assessment shall be \$98,000,000, and each individual special assessment shall be equivalent
8 to the insurer's estimated proportionate share of total reserves as submitted to the New York state insurance
9 department in each annual statement which has been filed on or before March, 1996 for the most recent business
10 year. All amounts collected pursuant to such special assessment shall be deposited in the general fund of the state
11 no later than March 1, 1997 in a manner prescribed by the superintendent.
- 12 § 2. Subdivision b of section 88 of such chapter of the laws of 1996 is amended to read as follows:
13 (b) Upon completion of the audit the superintendent of insurance shall develop a reconciliation report of all
14 amounts due pursuant to subdivision (a) of this section, and of any credits and outstanding liabilities of insurers
15 under this section for amounts paid under the special assessment pursuant to section [one hundred ten]
16 eighty-seven of this act. The superintendent of insurance shall report his findings to the comptroller who shall
17 certify such results. Payors to whom a credit from payments made pursuant to section [one hundred ten]
18 eighty-seven of this act is due to the state shall take such as a credit against current or future liabilities to the
19 state or shall request a refund of such certified amounts upon application to the comptroller. Payors for whom
20 outstanding liabilities with respect to and after consideration of payments made pursuant to section [one hundred
21 ten] eighty-seven of this act have been certified shall remit such amounts immediately upon certification to the
22 superintendent and deposited in the general fund in manner prescribed by the superintendent. Such reconciliation
23 report shall include the method and amounts of payments made by the state to insurers under this section for any
24 credits and funds received by the state for outstanding liabilities of insurers under this section.
- 25 § 3. This act shall take effect on the same date as a chapter of the laws of 1996, amending the workers'
26 compensation law relating to workers' compensation reform, as proposed by legislative bill S. 7951 or A. 11331,
takes effect.

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

LBD15140-02-6