ASSEMBLY, No. 878

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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SYNOPSIS

Permits group self-insurance plans for, and collective bargaining agreements improving the provision of, workers' compensation.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning collective bargaining agreements and group self-insurance plans for workers' compensation, amending R.S.34:15-77, and supplementing chapter 15 of Title 34 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. R.S.34:15-77 is amended to read as follows:

34:15-77. Any employer desiring to carry his own liability insurance may make application to the Commissioner of Banking and Insurance showing his financial ability to pay compensation. The commissioner, if satisfied of the applicant's financial ability and the permanence of his business, shall by written order exempt the applicant from insuring the whole or any part of his compensation liability.

The commissioner may from time to time require any employer exempted as herein provided to furnish further statements of financial ability and if at any time it appears to him that any such employer is no longer financially able to carry the risk of compensation liability the commissioner shall revoke his order granting exemption, whereupon the employer shall immediately insure his liability under this chapter in a mutual association or other insurance company authorized to engage in workers' compensation in this State.

Whenever the commissioner is not satisfied with the financial ability and the permanence of the business of an employer exempted as herein provided, or of a new applicant for exemption, he may consider, and shall have the authority to accept, as evidence of such ability to pay compensation, (a) a guaranty by the parent corporation of such applicant that said parent corporation will discharge the applicant's liability under this chapter; (b) a separate account or reserve fund, or any deposit thereupon, maintained by an applicant to discharge his liability under this chapter; (c) a surety bond executed by an association or corporation licensed to do business in this State, provided the surety on any such surety bond undertakes to discharge the applicant's liability under this chapter; or (d) a contract of an employer with an insurance carrier covering liability for a portion of the compensation required under article 2, chapter 15, Title 34 of the Revised Statutes.

Any employer or group of employers exempted as herein provided may for its own protection insure its liability for the payment of any stated loss in excess of $100,000.00 by reason of any single accident or by reason of occupational diseases scheduled in this chapter; provided, that any such contract of insurance shall

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

operate only between the employer or group of employers and its insurance carrier and shall not be subject to any of the provisions of this chapter.

An application pertaining only to a change of name of a presently exempt employer, without any change in the financial structure of said employer, shall not be considered as a new application for exemption under this act.

Pursuant to rules and regulations established by the Commissioner of Banking and Insurance, 10 or more employers licensed by the State as hospitals under the "Health Care Facilities Planning Act," P.L.1971, c.136 (C.26:2H-1 et seq.) may make application to the commissioner for permission to enter into agreements to pool their liabilities under this chapter for the purpose of qualifying as self-insurers. An employer member of the approved group shall be classified as a self-insurer.

Pursuant to the provisions of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), a group of employers who are participating in, or establishing, a Taft-Hartley trust fund, as defined in subsection d. of that section, may apply to the Commissioner of Banking and Insurance for approval to enter into agreements to pool their liabilities under chapter 15 of Title 34 of the Revised Statutes for the purpose of qualifying as members of a group plan for self-insurance. An employer member of an approved group plan shall be classified as a self-insurer and shall be subject to all requirements, obligations and liabilities of that chapter regarding an employer providing compensation by means of self-insurance, including all obligations to make payments to the Second Injury Fund, the New Jersey Self-Insurers Guaranty Association and the uninsured employer's fund, and shall also be subject to the provisions of section 7 of P.L. , c. (C.) (pending before the Legislature as this bill).

A group of employers participating in a Taft-Hartley trust fund may, in the alternative, meet their obligations to provide the protection prescribed by this article by purchasing, as a group, insurance from an insurance company or mutual association pursuant to the provisions of R.S.34:15-78.

(cf: P.L.1983, c.376, s.1)

2. (New section) a. If a group of employers who, with the union or unions representing their employees, are participating in, or establishing, a Taft-Hartley trust fund applies to the Commissioner of Banking and Insurance for approval to establish a group plan for self-insurance to provide all compensation required by chapter 15 of Title 34 of the Revised Statutes for the employees of the employers who are members of the group, the group shall present satisfactory proof to the Commissioner of Banking and Insurance of its financial ability to pay that compensation, including a statement of the group's revenues, their source and assurance for

their continuance. Under the group plan, the group shall assume the liability of all the employers within the group under the terms of a trust agreement approved by the Commissioner of Banking and Insurance, and pay all compensation for which the employers are liable under chapter 15 of Title 34 of the Revised Statutes. No employer participating in the group plan shall be relieved from the liability for the compensation except by the payment by the group plan or by the employer. The insolvency or bankruptcy of a participating employer shall not relieve the group self-insurer from the payment of compensation for injuries or death sustained by an employee during the time the employer was a participant in the group plan.

b. A group plan for self-insurance for the payment of workers' compensation by a Taft-Hartley trust fund shall be approved by the Commissioner of Banking and Insurance if the group plan is established by a collective bargaining agreement negotiated between the group of employers and one or more unions that are determined by the Commissioner of Labor and Workforce Development to be the recognized or certified exclusive bargaining representatives of the employees of the employers, and the Commissioner of Banking and Insurance finds that the group plan and the participating employers comply with all applicable requirements of this section and with all requirements specified in regulations adopted by the Commissioner of Banking and Insurance regarding:

(1) The financial condition of the plan and the provisions of the plan to ensure the payment of all required compensation;

(2) The reporting and disclosure of information and documents regarding the plan and its finances, operations, officers, personnel and member employers;

(3) The procedures for the addition or termination of employers participating in the plan; and

(4) The deposit with the Commissioner of Banking and Insurance, at the inception of the plan, of any types and amounts of securities or surety bonds as the Commissioner of Banking and Insurance deems necessary to ensure the payment of all required compensation.

c. The Commissioner of Banking and Insurance may conduct an annual examination of each group self-insurer as he deems necessary and may deny the application of any group of self-insurers to operate a group plan, or revoke approval of a group plan, for good cause shown, including:

(1) Failure to comply with the requirements set out in regulations adopted by the Commissioner of Banking and Insurance or with any provision of this section or R.S.34:15-77;

(2) Failure to comply with a lawful order of the Commissioner of Banking and Insurance; or

(3) Deterioration of financial condition to such an extent that such deterioration would have an adverse effect on the ability of the self-insurance group to pay expected losses.

The Commissioner of Banking and Insurance shall provide to the group self-insurer or applicant for group self-insurance a written explanation of the reasons for any denial or revocation and an opportunity to appeal the denial or revocation.

d. For the purposes of this section, "Taft-Hartley trust fund" means a labor-management, jointly-administered, worker benefit trust fund formed pursuant to a collectively bargained agreement in compliance with the provisions of paragraph (5) of subsection (c) of section 302 of the "Labor Management Relations Act, 1947," 29 U.S.C. s.186(c)(5), between one or more employers and one or more unions that are determined by the Commissioner of Labor and Workforce Development to be the recognized or certified exclusive bargaining representatives of the employees of those employers.

e. The Commissioner of Banking and Insurance shall, in consultation with the Commissioner of Labor and Workforce Development, adopt all rules and regulations necessary or useful to effectuate the provisions of this section regarding the recognition, approval, oversight and revocation of approval of a group plan, including any fee schedules that the Commissioner of Banking and Insurance deems necessary to reimburse the Department of Banking and Insurance to carry out its responsibilities pursuant to this section.

3. (New section) Upon approval by the Commissioner of Labor and Workforce Development pursuant to section 4 of P.L. , c. (C.) (pending before the Legislature as this bill), the commissioner, each judge of compensation, and any court shall recognize as valid and binding any provisions of any collective bargaining agreement between an employer or a group of employers, including a group of employers that has established an approved plan of group self-insurance pursuant to section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), and one or more unions that are determined by the commissioner to be the recognized or certified exclusive bargaining representatives of the employees of the employers, to establish obligations and procedures relating to workers' compensation to provide for any or all of the following:

a. The use, notwithstanding any other provisions of chapter 15 of Title 34 of the Revised Statutes regarding the selection of providers of medical treatment, of a list or network, agreed upon by the employers and the unions, of providers of medical treatment that are the exclusive source of all medical and related treatment provided pursuant to that chapter, and the agreement may, if agreed by the employers and the unions, provide an option for the use of

qualified providers outside of the network or list in emergencies during which providers on the network or list are not available;

b. The use, notwithstanding any other provisions of chapter 15 of Title 34 of the Revised Statutes regarding the selection of providers of medical evaluation, of a list or network, agreed upon by the employers and the unions, of qualified medical evaluators that are the exclusive source of medical evaluations provided pursuant to that chapter;

c. The use, notwithstanding any other provisions of chapter 15 of Title 34 of the Revised Statutes regarding the selection of providers of vocational rehabilitation and retraining services, of a list or network, agreed upon by the employers and the unions, of providers of vocational rehabilitation and retraining services that are the exclusive source of vocational rehabilitation and retraining services for injuries compensable under that chapter;

d. With respect to employees who are provided group health benefits or temporary disability benefits for non-occupational injury and illness by employers, the coordination or integration of the delivery, funding, or both funding and delivery, of compensation provided under chapter 15 of Title 34 of the Revised Statutes with group health benefits or non-occupational temporary disability benefits, including arrangements for the use of lists or networks of medical providers agreed upon by the employers and the unions, for both occupational and non-occupational medical treatment;

e. Benefits supplemental to those provided under chapter 15 of Title 34 of the Revised Statutes or under the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.);

f. The establishment of joint labor-management occupational safety and health committees; and

g. The creation or promotion of a light-duty or transitional return-to-work program.

If the unions and employers have established a Taft-Hartley trust fund as defined in subsection d. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), the providers of medical treatment, medical evaluations, or vocational rehabilitation and retraining services to be included in any network or list agreed to pursuant to this section may be selected by the trustees of the Taft-Hartley trust fund.

4. (New section) a. Any one or more unions that are the recognized or certified exclusive bargaining representatives of the affected employees may file with the Commissioner of Labor and Workforce Development a petition seeking authorization to negotiate an agreement with one or more employers pursuant to section 3 of P.L. , c. (C.)(pending before the Legislature as this bill). The petition shall include the proof required by the commissioner that the unions are the recognized or certified exclusive bargaining representatives for the employees subject to

the agreement, specify the bargaining unit or units to be included and the names of the unions and employers, and be accompanied by a copy of any current applicable collective bargaining agreement. Upon verification that the petitioners are the exclusive bargaining representatives and that the petition satisfies all applicable requirements of this section, the commissioner shall notify the employers and unions that they are authorized to enter into the negotiations. Upon the completion of the negotiations, a copy of the negotiated agreement, identifying the employer or the group of employers and the union or unions, shall be filed with the commissioner. Within 21 days of receipt of an agreement, the commissioner shall review the agreement for compliance with the provisions of chapter 15 of Title 34 of the Revised Statutes and section 3 of P.L. , c. (C.) (pending before the Legislature as this bill), and either approve the agreement or deny approval and notify the parties of any additional information required or any modification of the agreement determined by the commissioner to be necessary to bring the agreement into compliance with the provisions of this act and obtain approval.

b. If the employer is insured under chapter 15 of Title 34 of the Revised Statutes it shall obtain consent from its insurance carrier to enter into an agreement as provided in section 3 of P.L. , c. (C .) (pending before the Legislature as this bill), unless the employer obtains insurance from a different carrier or participates in a group plan for self-insurance pursuant to section 2 of P.L. , c. (C.) (pending before the Legislature as this bill).

5. (New section) Nothing in P.L. , c. (C.) (pending before the Legislature as this bill), shall be construed as permitting any provision of a collective bargaining agreement entered into pursuant to section 3 of this act, of an agreement or group plan subject to the provisions of this act for self-insurance, or of an arrangement for a group purchase of insurance under the provisions of this act, that:

a. Diminishes any employee’s entitlement to full payment by the employer for all compensation required by chapter 15 of Title 34 of the Revised Statutes, including benefits for temporary disability or total or partial disability, medical treatment and rehabilitation services, and benefits for dependents and survivors;

b. Diminishes any employee’s entitlement to temporary disability benefits pursuant to the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.) or increases to any degree costs to the employee of temporary disability benefits; or

c. Supersedes or diminishes any employee’s or employer’s rights under any provision of chapter 15 of Title 34 of the Revised Statutes, including, but not limited to, all rights of an employee or employer to obtain resolution of disputed claims by the Division of Workers’ Compensation, all rights provided by R.S.34:15-15 to an

employee to secure treatment and services refused by an employer, including an employer who is a member of a group, all rights of an employee or employer to representation by an attorney at any stage of the resolution of any aspect of a workers' compensation claim, and all rights of an employee or employer to have attorney, witness and other fees paid as provided by chapter 15 of Title 34 of the Revised Statutes.

Any portion of any collective bargaining agreement or agreement or group plan for self-insurance, or arrangement for a group purchase of insurance, that violates any provision of this section is null and void. Each employer and employee shall be notified of the protections of rights provided by this section upon first becoming subject to the agreement, plan, or arrangement and upon the occurrence of any injury compensable under the agreement, plan, or arrangement.

6. (New section) Commencing on July 1, 2016, and annually thereafter, the Commissioner of Labor and Workforce Development shall provide to the Governor and the Legislature, and make public, an annual report on agreements approved pursuant to section 4 of P.L. , c. (C.) (pending before the Legislature as this bill), which shall include aggregate data on the following:

a. The number of employers and employees, work hours and payroll covered by the agreements;

b. The projected incurred costs and actual costs of claims under the agreements;

c. Any occupational safety and health activities under the agreements and their impact;

d. The numbers of employers and employees participating in vocational rehabilitation and light-duty programs under the agreements;

e. The numbers of employers and employees participating in programs to coordinate or integrate benefits for occupational and non-occupational injury and illness; and

f. The numbers of employers and workers participating in programs under the agreements of joint labor-management selection of medical providers, medical evaluators, or rehabilitation providers.

In addition, the annual report may include comparisons between the aggregate data for participating employers and the aggregate data for other employers with respect to claims, disputes, costs and other aspects of workers’ compensation.

The data obtained by the commissioner for the preparation of the annual report shall be confidential and not subject to public disclosure under any law of this State, except for information disclosed in the report in a manner which is not identifiable with any individual employee or employer, and except that the commissioner shall make public a current list of employers and

unions entering into agreements approved pursuant to section 4 of this act.

7. (New section) The Commissioner of Labor and Workforce Development, in consultation with the Commissioner of Banking and Insurance, shall adopt all rules and regulations deemed necessary or useful by the commissioner to effectuate the provisions of sections 3 through 6 of P.L. , c. (C.) (pending before the Legislature as this bill) regarding the authorization, approval and oversight of agreements negotiated pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill), including any requirements deemed appropriate by the commissioner regarding the obtaining and retaining of records or information on programs under the agreements.

8. This act shall take effect on the 120th day following enactment.

STATEMENT

This bill permits, but does not require, groups of employers establishing or participating in Taft-Hartley trust funds to purchase workers' compensation insurance as a group or to apply to the Commissioner of Banking and Insurance for approval to enter into agreements to pool their workers' compensation liabilities for the purpose of qualifying as members of a group plan for self-insurance. A "Taft-Hartley trust fund" is a labor-management, jointly administered fund established by collective bargaining to provide employee benefits such as medical benefits or pensions.

The bill requires the commissioner to recognize as valid a group plan for the payment of workers' compensation by a Taft-Hartley trust fund if the plan is negotiated between the employer group and one or more unions, and it complies with the commissioner's requirements to disclose information and take measures needed to ensure the payment of compensation. The commissioner may conduct annual examinations and deny applications or revoke his approval for good cause.

The bill also permits, but does not require, employers, whether or not they purchase group coverage or establish group self-insurance for workers' compensation, to negotiate with one or more unions an agreement to better promote workplace safety and the fair, timely, and cost-effective delivery of workers' compensation benefits by means of any one or more of the following:

1. The use of networks or lists, mutually agreed upon by the employers and the unions, of providers of medical treatment, medical evaluation and rehabilitation as the exclusive providers of

those services, notwithstanding other provisions of the workers' compensation law regarding the selection of providers;

2. The coordination and integration of the delivery of workers' compensation with group health benefits and non-occupational temporary disability benefits;

3. The provision of additional benefits to supplement benefits provided under workers' compensation or non-occupational temporary disability insurance;

4. The creation of joint labor-management occupational safety and health committees; and

5. The creation or promotion of light-duty, modified job and return-to-work programs.

The bill prohibits such agreements or group plans from diminishing employee entitlements to workers' compensation or temporary disability benefits or from denying or diminishing employee rights regarding the obtaining of compensation or benefits, including, but not limited to, all rights to obtain resolution of disputed claims by the Division of Workers' Compensation, all rights to secure treatment and services refused by an employer, all rights to representation by an attorney at any stage of the resolution of any aspect of a workers' compensation claim, and all rights to have attorney, witness and other fees paid, as provided the workers' compensation law.

The bill provides that nothing in a collective bargaining agreement entered into under the bill is to be construed as permitting any diminishment of any rights provided by the workers compensation law to employers or employees.

The Commissioner of Labor and Workforce Development is required to set standards, monitor, and issue annual reports regarding the agreements.