

New York
WORKERS' COMPENSATION LAW — CHAPTER 67 OF
THE CONSOLIDATED LAWS
Article 4 — SECURITY FOR COMPENSATION

Work. Comp. s 54 The insurance contract

1. *Right of recourse to the insurance carrier.* Every policy of insurance covering the liability of the employer for compensation shall be issued by one or more stock companies, mutual corporations or reciprocal insurers authorized to transact workers' compensation insurance in this state. In the case of a policy with multiple insurers, such insurers shall share one hundred percent of the liabilities by subscription, and one of the insurers shall serve as the lead insurer for notice and cancellation purposes. Such a policy shall contain a provision setting forth the right of the chair to enforce in the name of the people of the state of New York for the benefit of the person entitled to the compensation insured by the policy either by filing a separate application or by making the insurance carrier a party to the original application, the liability of the insurance carrier in whole or in part for the payment of such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance carrier shall to the extent thereof be a bar to the recovery against the other of the amount so paid.

2. *Knowledge and jurisdiction of the employer extended to cover the insurance carrier.* Every such policy shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier, or if more than one insurer, the lead carrier; that jurisdiction of the employer shall, for the purpose of this chapter, be jurisdiction of the lead insurance carrier and that such insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer for the payment of compensation under the provisions of this chapter.

3. *Insolvency of employer does not release the insurance carrier.* Every such policy shall contain a provision to the effect that the insolvency or bankruptcy of the employer shall not relieve the insurance carrier from the payment of compensation for injuries or death sustained by an employee during the life of such policy.

4. *Limitation of indemnity agreements.* Every contract or agreement of an employer the purpose of which is to indemnify him from loss or damage on account of the injury of an employee by accidental means, or on account of the negligence of such employer or his officer, agent or servant, shall be absolutely void unless it shall also cover liability for the payment of the compensation and for the payment into the special funds provided for by this chapter. Every such contract or agreement of insurance issued by an insurance carrier covering the liability of an employer for the payment of the compensation and for the payment into the special funds provided by this chapter shall be deemed to include all employees of the employer employed at

or in connection with the business of the employer carried on, maintained, or operated at the location or locations set forth in such contract or agreement and employees for whose injuries a contractor may become liable under the provisions of section fifty-six of this chapter. Any employee or employees or class of employees not enumerated in section three, subdivision one, group one to seventeen inclusive, of this chapter, employed by a municipal corporation or political subdivision of the state, may by the terms of the contract or agreement be expressly excluded therefrom.

5. (a) *Cancellation and termination of insurance contracts.* No contract of insurance issued by an insurance carrier against liability arising under this chapter shall be cancelled within the time limited in such contract for its expiration unless notice is given as required by this section. When cancellation is due to non-payment of premiums and assessments, such cancellation shall not be effective until at least ten days after a notice of cancellation of such contract, on a date specified in such notice, shall be filed in the office of the chair and also served on the employer. When cancellation is due to any reason other than non-payment of premiums and assessments, such cancellation shall not be effective until at least thirty days after a notice of cancellation of such contract, on a date specified in such notice, shall be filed in the office of the chair and also served on the employer; provided, however, in either case, that if the employer has secured insurance with another insurance carrier which becomes effective prior to the expiration of the time stated in such notice, the cancellation shall be effective as of the date of such other coverage. No insurer shall refuse to renew any policy insuring against liability arising under this chapter unless at least thirty days prior to its expiration notice of intention not to renew has been filed in the office of the chair and also served on the employer.

Such notice shall be served on the employer by delivering it to him, her or it or by sending it by mail, by certified or registered letter, return receipt requested, addressed to the employer at his, her or its last known place of business; provided that, if the employer be a partnership, then such notice may be so given to any of one of the partners, and if the employer be a corporation then the notice may be given to any agent or officer of the corporation upon whom legal process may be served; and further provided that an employer may designate any person or entity at any address to receive such notice including the designation of one person or entity to receive notice on behalf of multiple entities insured under one insurance policy and that service of notice at the address so designated upon the person or entity so designated by delivery or by mail, by certified or registered letter, return receipt requested, shall satisfy the notice requirement of this section. Provided, however, the right to cancellation of a policy of insurance in the state fund shall be exercised only for non-payment of premiums and assessments or as provided in section ninety-four of this chapter.

The provisions of this subdivision shall not apply with respect to policies containing coverage pursuant to subsection (j) of section three thousand four hundred twenty of the insurance law relating to every policy providing comprehensive personal liability insurance on a one, two, three or four family owner-occupied dwelling.

In the event such cancellation or termination notice is not filed with the chair within the required time period, the chair shall impose a penalty in the amount of up to five hundred dollars for each ten-day period the insurance carrier or state insurance fund failed to file the notification. All penalties collected pursuant to this subdivision shall be deposited in the uninsured employers' fund.

(b) *Conditional renewal for carriers under common control.* A contract of insurance shall remain in full force and effect subject to the same rates as the expiring contract of insurance rates, unless written notice is mailed or delivered by the insurance carrier to the employer, at the address shown on the policy, and to such employer's authorized agent or broker, indicating the insurance carrier's intention to condition renewal upon issuance of a policy that supersedes a policy previously issued by another insurance carrier under common control that will result in an increased premium in excess of ten percent (exclusive of any premium increase generated as a result of increased loss costs filed and approved in accordance with subsection (e) of section two thousand three hundred five of the insurance law, increased exposure units, or as a result of experience rating, contractor credit adjustment program, merit rating, retrospective rating or audit or removal or reduction of a drug free credit, managed care credit, or deductible. Such notice shall be mailed or delivered at least thirty days in advance of the expiration date of the policy, and shall set forth the amount of the premium increase (or, where such amount cannot reasonably be determined as of the time the notice is provided due to failure of the policyholder to provide to the insurance carrier the information necessary to determine the premium, a reasonable estimate of the premium increase based upon the information available to the insurance carrier at that time). Nothing in this subdivision shall require the insurance carrier to provide such notice when the employer, an agent or broker authorized by the employer, or another insurance carrier of the employer has mailed or delivered written notice that the policy has been replaced or is no longer desired.

5-a. Issuance, amendment, endorsement or reinstatement of insurance contracts.

A. Any insurance carrier or the state insurance fund who issues, reinstates, amends or endorses any contract of insurance or rider thereto covering the liability of an employer for compensation under this chapter shall file notification in the office of the chair within thirty days after such issuance, reinstatement, amendment, or endorsement of the contract. Such notice shall be filed in the manner and form prescribed by the chair.

B. In the event notice required under this subdivision is not filed with the chair within the thirty-day time period, or notice is not provided by a group self-insured trust pursuant to regulation promulgated by the board regarding notification of the trust's commencement or termination of coverage for any employer, the chair may impose a penalty of up to five hundred dollars for each ten-day period the insurance carrier or state insurance fund or group self-insurance trust failed to file the notification. All penalties collected pursuant to this subdivision shall be deposited in the uninsured employers' fund.

C. The provisions of this subdivision shall not apply with respect to insurance policies containing coverage pursuant to subsection (j) of section three thousand four hundred twenty of the insurance law relating to every policy providing comprehensive personal liability insurance on a one, two, three or four family owner-occupied dwelling.

6. a. *Insurance of officers of corporations.* Every executive officer of a corporation shall be deemed to be included in the compensation insurance contract or covered under a certificate of self-insurance unless that person is an unsalaried executive officer of a not-for-profit corporation or unincorporated association and such corporation or association elects to exclude that person from the coverage of this chapter. Such election to exclude such person shall be made in writing on a form

prescribed by the chair and filed with the insurance carrier. Such election shall be effective with respect to all of the policies issued to the corporation or association by such insurance carrier as long as it shall continuously insure the corporation or association, provided that written notice of the continuation of the election to exclude any or all executive officers is given to the corporation or association with each renewal notice of the policy. If such election is revoked, it shall be in writing on a form prescribed by the chair, and shall be filed with the chair and the insurance carrier. Such revocation shall not be effective until thirty days after such filing. Any executive officer whose corporation or association files an election not to be included under this chapter shall be deemed not to be an employee within the intent of this chapter; however, if not excluded, such officers and their dependents shall be entitled to compensation as provided by this chapter.

b. An executive officer of any corporation who at all times during the period involved owns all of the issued and outstanding stock of the corporation and holds all of the offices pursuant to paragraph (e) of section seven hundred fifteen of the business corporation law and who is the executive officer of a corporation having other persons who are employees required to be covered under this chapter shall be deemed to be included in the compensation insurance contract or covered under a certificate of self-insurance unless the officer elects to be excluded from the coverage of this chapter. Such election shall be made by the corporation filing a notice that the corporation elects to exclude the executive officer of such corporation named in the notice from coverage of this chapter. Such election shall be filed with the insurance carrier or the chair in the case of self-insurance upon a form prescribed by the chair of the workers' compensation board. Such election shall be effective with respect to all policies issued to such corporation by such insurance carrier as long as it shall continuously insure the corporation and shall be final and binding upon the executive officer named in the notice until revoked by the corporation in accordance with paragraph a of this subdivision.

(c). An executive officer of any corporation who at all times during the period involved owns all of the issued and outstanding stock of the corporation and holds all of the offices pursuant to paragraph (e) of section seven hundred fifteen of the business corporation law and who is the executive officer of a corporation that has no other persons who are employees required to be covered under this chapter shall be deemed to be excluded from coverage under this chapter unless such officer elects to be covered. Such coverage may be effected by obtaining an insurance policy or in the case of self-insurance by the corporation submitting a form prescribed by the chair of the workers' compensation board, giving notice that the corporation elects to bring the executive officer of such corporation named in the notice within the coverage of this chapter.

d. Any two executive officers of a corporation who at all times during the period involved between them own all of the issued and outstanding stock of the corporation and hold all such offices, provided, however that each officer must own at least one share of stock, who are the executive officers of such corporation having other persons who are employees required to be covered under this chapter shall be deemed to be included in the compensation insurance contract or covered under a certificate of self-insurance unless one or both the officers elect to be excluded from the coverage of this chapter. Such election shall be made by any such corporation filing a form prescribed by the chair of the workers' compensation board with the insurance carrier or the chair in the case of self-insurance giving

notice that the corporation elects to exclude one or both of the executive officers of such corporation named in the notice from the coverage of this chapter. Such election shall be effective with respect to all policies issued to such corporation by such insurance carrier as long as it shall continuously insure the corporation and shall be final and binding upon the executive officers as named in the notice until revoked by the corporation. If such election is revoked, it shall be in writing on a form prescribed by the chair and shall be filed with the chair and the insurance carrier. Such revocation shall not be effective until thirty days after such filing.

e. Any two executive officers of a corporation who at all times during the period involved between them own all of the issued and outstanding stock of such corporation and hold all such offices, provided, however that each officer must own at least one share of stock, who are the executive officers of such corporation that has no other persons who are employees required to be covered under this chapter shall be deemed to be excluded from coverage under this chapter unless one or both officers elect to be covered. Such coverage may be effected by obtaining an insurance policy or, in the case of self-insurance, by the corporation submitting a form prescribed by the chair of the workers' compensation board, giving notice that the corporation elects to bring one or both executive officers of such corporation named in the notice within coverage of this chapter.

f. Notwithstanding the provisions of paragraph a of this subdivision or any other provision of this chapter, any executive officer of a religious, charitable or educational corporation and the officers of a municipal corporation, and officers of any post or chapter of organizations of veterans of any war of the United States may be brought within the coverage of the insurance contract as if they were employees by any such corporation filing with the insurance carrier, upon a form prescribed by the chair of the workers' compensation board, a notice that the corporation elects to bring one or more executive officers of such corporation named in the notice within the coverage of this chapter. Such election shall be effective with respect to all policies issued to such corporation by such insurance carrier as long as it shall continuously insure the corporation. If such election is revoked, it shall be in writing on a form prescribed by the chair and filed with the chair and with the insurance carrier and a copy thereof furnished to each officer as to whom such revocation is applicable, upon a form prescribed by the chair. Such revocation shall not be effective until thirty days after such filing. The estimation of the wage values of executive officers within the coverage of the insurance contract shall be reasonable and separately stated and added to the valuation of the payrolls upon which the premium is computed.

g. The executive officers brought within the coverage of the insurance contract, and the dependents of any such executive officers, including executive officers of religious, charitable or educational corporations and officers of municipal corporations, and officers of any post or chapter of organizations of veterans of any war of the United States that have elected to bring their officers within the coverage of the policy, shall have the same rights and remedies as any employee and shall be entitled to compensation and medical care as provided by this chapter, and the insurance carrier shall be liable therefor and for payments into the special funds provided in this chapter as in the case of an employee. The executive officers who may be brought within the coverage of an insurance contract shall include an officer of a corporation who at all times during the period involved between them owns all of the issued and outstanding stock of the corporation and holds all of the

offices pursuant to paragraph (e) of section seven hundred fifteen of the business corporation law or two executive officers of a corporation who at all times during the period involved between them own all of the issued and outstanding stock of such corporation and hold all such offices and who is the executive officer or who are the executive officers of a corporation that has no other persons who are employees required to be covered under this chapter.

h. Any officer or officers, elective or appointive, of a municipal corporation or other political subdivision of the state complying with the provisions of group nineteen of subdivision one of section three of this chapter shall be deemed executive officers subject to the provisions of this subdivision.

6-a. Insurance contracts with fire or ambulance districts. Notwithstanding any other provision of this section or of this chapter, any insurance contract to secure workers' compensation for a fire or ambulance district pursuant to subdivision one or subdivision two of section fifty of this chapter issued to take effect on or after July first, nineteen hundred sixty, in relation to a fire district and January first, in the year next succeeding the year in which this subdivision as hereby amended becomes effective, in relation to an ambulance district or any such contract renewed to continue in effect on or after such dates, shall provide workers' compensation coverage for all fire or ambulance district officers, whether elective or appointive, and all fire or ambulance district employees, whether or not they are compensated for their services, unless the board of fire or ambulance commissioners of the fire district or ambulance district by resolution elects not to provide such coverage for any one or more of such officers or employees, or class thereof. Such election not to provide such coverage shall be effective with respect to all such insurance contracts thereafter issued to such fire or ambulance district by any insurance carrier until revoked in whole or in part by resolution of the board of fire or ambulance commissioners of the fire or ambulance district. Such election not to provide such coverage shall not become effective until thirty days after a copy of such resolution has been filed with the chairman of the workers' compensation board and with the insurance carrier and a copy thereof is furnished to each officer and employee as to whom such revocation is applicable. The chairman of the workers' compensation board shall prescribe the form of such resolution. The provisions of this subdivision shall not be applicable in cases where the injury arises out of and in the course of duty as a volunteer firefighter or a volunteer ambulance worker or as a civil defense volunteer and where the computation of benefits would be made under the provisions of the volunteer firefighters' benefit law or the volunteer ambulance workers' benefit law or under article ten of this chapter.

7. Limitation of the issuance of policies by a foreign insurance company. No policy or contract of insurance issued by a foreign stock corporation or mutual association authorized to transact the business of workers' compensation insurance in this state, except a corporation organized under the laws of a state or country outside of the United States and domiciled in this state, covering or intended to cover the liability of an employer to his employees under this chapter, shall be accepted as a compliance with subdivision two of section fifty of this chapter, unless such foreign stock corporation or mutual association shall have filed with the superintendent of financial services a bond or undertaking with good and sufficient sureties to the people of the state of New York, and conditioned upon the payment in full of any and all compensation and benefits as provided in this chapter to any and all persons entitled thereto under any such policy or contract of insurance. Such bond shall be approved as to form by the attorney-general and as to sufficiency by the superintendent of

financial services. The amount of such bond shall be such sum as may reasonably represent twenty-five per centum of the outstanding reserves for compensation losses on policies issued by such foreign stock corporation or mutual association upon risks located in the state of New York as determined by law or by the requirements of the superintendent of financial services, provided, however, that the amount of such bond shall in no case be less than twenty-five thousand dollars nor more than one million dollars. Such bond shall be renewed annually. Every such bond shall contain a provision authorizing the attorney-general upon the certificate of the superintendent of financial services that there has been default in the payment of compensation for thirty days or that the bonded company has become insolvent to enforce such bond in the name of the people of the state of New York for the benefit of any and all persons entitled to the compensation assured by any policy issued by such foreign stock corporation or mutual association or otherwise entitled to any benefits under such policy. In lieu of the bond required to be given hereunder any such foreign stock corporation or mutual association may deposit with the superintendent of financial services securities of the kind prescribed in section one thousand three hundred eighteen of the insurance law in an amount equal to twenty-five per centum of the outstanding reserves for compensation losses on policies issued by such foreign stock corporation or mutual association upon risks located in the state of New York, but not less than twenty-five thousand dollars nor more than one million dollars. In computing the amount of such securities they shall be valued as determined by the superintendent of financial services in valuing the assets of insurance companies. Such securities shall be held by the superintendent of financial services as a special deposit and as express security for the payment of such compensation or benefits and may be sold by the said superintendent without notice in the event that there has been default in the payment of compensation for thirty days or that the depositing company has become insolvent. The income thereon shall be collected by the superintendent of financial services and, prior to any default in the payment of such compensation or benefits, shall be paid over by him to the stock corporation or mutual association depositing the same.

However, no such bond or undertaking shall be required to be filed after July first, nineteen hundred eighty-eight, by any carrier making payment to the stock or mutual funds respectively established by sections one hundred seven and one hundred nine-d of this chapter.

8. A self-employed person, a partner of a partnership as defined in section ten of the partnership law but not including a limited partner, a partner of a registered limited liability partnership as defined in section two of the partnership law, a member of a limited liability company as defined in subdivision (m) of section one hundred two of the limited liability company law or a member of a professional service limited liability company as defined in subdivision (f) of section one thousand two hundred one of the limited liability company law, having other persons who are employees required to be covered under this chapter may be included in the compensation insurance contract or covered under a certificate of self-insurance. Such election shall be made by any such partnership, sole proprietorship, registered limited liability partnership, limited liability company or professional service limited liability company filing with the insurance carrier or the chair in the case of self-insurance upon a form prescribed by the chair, a notice that the partnership, sole proprietorship, registered limited liability partnership, limited liability company or professional service limited liability company elects to include the partner, partners, the self-employed person or member named in the notice in the coverage of this chapter. Such election shall be effective with respect to all policies issued to such partnership, sole proprietorship, registered limited liability

partnership, limited liability company or professional service limited liability company by such insurance carrier as long as it shall continuously insure the employees of the partnership, sole proprietorship, registered limited liability partnership, limited liability company or professional service limited liability company. Such election shall be final and binding upon the partner, self-employed person or member named in the notice until revoked by the partnership, sole proprietorship, registered limited liability partnership, limited liability company or professional service limited liability company. A self-employed person, a partner of a partnership, a partner of a registered limited liability partnership, a member of a limited liability company or a member of a professional service limited liability company having no other persons who are employees required to be covered under this chapter shall be deemed to be excluded from coverage under this chapter unless he or she elects to be covered. Such coverage may be effected by obtaining an insurance policy.

The self-employed persons, partners of a partnership, partners of a registered limited liability partnership, members of a limited liability company or members of a professional service limited liability company brought within the coverage of the insurance contract, and the dependents of any such self-employed persons, partners of a partnership, partners of a registered limited liability partnership, members of a limited liability company or members of a professional service limited liability company shall have the same rights and remedies as any employee or his or her dependents and shall be entitled to compensation and medical care as provided by this chapter, and the insurance carrier shall be liable therefor and for payments into the special funds provided in this chapter as in the case of an employee.

History L. 1913, c. 816; L. 1922, c. 615; L. 1929, c. 305; L. 1935, c. 255, s 3; L. 1939, cc. 241, 404; L. 1939, c. 668, s 2; L. 1940, c. 435, s 6; L. 1941, c. 875, s 2; L. 1942, c. 617, s 2; L. 1946, c. 113, s 37; L. 1946, c. 605, s 5; L. 1947, c. 717; L. 1948, c. 682; L. 1960, c. 788; L. 1971, c. 667; L. 1973, c. 154, s 1; L. 1982, c. 335, s 1; L. 1982, c. 396, s 2; L. 1983, c. 147, s 2; L. 1984, c. 805, s 93; L. 1985, c. 410, s 1; L. 1985, c. 417, s 1; L. 1985, c. 858, s 3; L. 1986, c. 446, s 2; L. 1988, c. 24, s 22; L. 1992, c. 164, s 1; L. 1993, c. 205, s 2; L. 2006, AB 7066, s 1, eff. 6-13-2006; L. 2007, AB 6163, s 42, eff. 3-13-2007; 2008, SB 8400, ss 1, 2, eff. 10-19-2008; 2013, SB 2607, pt. GG, s 23, eff. 3-29-2013; 2017, AB 1620, s 1, eff. 4-17-2018; 2018, SB 7283, s 1, eff. 4-17-2018.