

STATE OF NEW YORK

S. 3322

A. 6163

2007-2008 Regular Sessions

SENATE - ASSEMBLY

March 3, 2007

IN SENATE -- Introduced by Sens. BRUNO, MAZIARZ, ALESI, BONACIC, DeFRANCISCO, FARLEY, FLANAGAN, FUSCHILLO, GOLDEN, GRIFFO, HANNON, O. JOHNSON, LANZA, LARKIN, LAVALLE, LEIBELL, LIBOUS, LITTLE, MALTESE, MARCELLINO, MORAHAN, NOZZOLIO, PADAVAN, RATH, ROBACH, SALAND, SEWARD, SKELOS, TRUNZO, VOLKER, WINNER, WRIGHT, YOUNG -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

IN ASSEMBLY -- Introduced by M. of A. SILVER, JOHN, FARRELL, CANESTRARI, MORELLE, DESTITO, SCHIMMINGER, STIRPE, DelMONTE, T. GORDON, MAGNARELLI, AUBERTINE, GABRYSAK, KOON, EDDINGTON, BRADLEY, REILLY, FIELDS, BING, LUPARDO, CAHILL, HOYT -- Multi-Sponsored by -- M. of A. ALFANO, ARROYO, AUBRY, BACALLES, BALL, BARCLAY, BARRA, BENEDETTO, BENJAMIN, BOYLAND, BOYLE, BRODSKY, BROOK-KRASNY, BURLING, BUTLER, CALHOUN, CAMARA, CARROZZA, CHRISTENSEN, CLARK, COLE, CONTE, COOK, CROUCH, CUSICK, CYMBROWITZ, L. DIAZ, R. DIAZ, DINOWITZ, DUPREY, ENGLEBRIGHT, ERRIGO, FINCH, FITZPATRICK, GALEF, GIANARIS, GIGLIO, D. GORDON, GOTTFRIED, GRANNIS, GREENE, GUNTHER, HAWLEY, HAYES, HEASTIE, HIKIND, HOOPER, HYER-SPENCER, JAFFEE, KAVANAGH, KOLB, LAFAYETTE, LAVINE, LIFTON, P. LOPEZ, V. LOPEZ, MAGEE, MAISEL, MARKEY, MAYERSOHN, McDONALD, McDONOUGH, McENENY, McKEVITT, MILLER, MILLMAN, MOLINARO, NOLAN, OAKS, O'MARA, ORTIZ, PAULIN, PEOPLES, PERALTA, PHEFFER, POWELL, PRETLOW, QUINN, RABBITT, RAIA, RAMOS, REILICH, J. RIVERA, N. RIVERA, P. RIVERA, ROBINSON, SALADINO, SAYWARD, SCARBOROUGH, SCHROEDER, SCOZZAFAVA, SEMINERIO, SPANO, SWEENEY, TEDISCO, THIELE, TITUS, TONKO, TOWNSEND, WALKER, WEINSTEIN, WEISENBERG, WEPRIN, WRIGHT, YOUNG, ZEBROWSKI -- (at request of the Governor) -- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law, the labor law, the insurance law, the tax law, the volunteer ambulance workers' benefit law, the volunteer firefighters' benefit law, and the public officers law, in relation to increasing benefits, setting maximum benefit weeks for receiving payments on certain claims, providing enhanced return to work services and expedited medical services for claimants, increasing

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

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penalties and enforcement against fraud, implementing cost-savings,

providing for premium discounts, authorizing the closing of the special disability fund to new claims; and to amend the public authorities law, in relation to the issuance by the dormitory authority of revenue bonds secured by debt service assessments in connection therewith

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

1 Section 1. Section 2 of the workers' compensation law is amended by
2 adding eight new subdivisions 16, 17, 18, 19, 20, 21, 22 and 23 to read
3 as follows:

4 16. "New York state average weekly wage" shall mean the average weekly
5 wage of the state of New York for the previous calendar year as reported
6 by the commissioner of labor to the superintendent of insurance on March
7 thirty-first.

8 17. A "substantially owned affiliated entity" of any person means the
9 parent company of the person, any subsidiary of the person, or any enti-
10 ty in which the parent of the person owns more than fifty percent of the
11 voting stock, or an entity in which one or more of the top five share-
12 holders of the person individually or collectively also owns a control-
13 ling share of the voting stock, or an entity which exhibits any other
14 indicia of control over the person or over which the person exhibits
15 control, regardless of whether or not the controlling party or parties
16 have any identifiable or documented ownership interest. Such indicia
17 shall include: power or responsibility over employment decisions; access
18 to and/or use of the relevant entity's assets or equipment; power or
19 responsibility over contracts of the person; responsibility for mainte-

20 nance or submission of certified payroll records; and influence over the
21 business decisions of the relevant entity.

22 18. The "special funds conservation committee" means the entity organ-
23 ized for the purpose of conserving assets of the special funds created
24 under subdivision eight of section fifteen and section twenty-five-a of
25 this chapter.

26 19. A "claim for reimbursement" from the special disability fund means
27 an application to the board under paragraph (f) of subdivision eight of
28 section fifteen of this chapter for a determination that the special
29 disability fund is liable in the first instance for any reimbursement to
30 the insurance carrier, self-insured employer or state insurance fund.

31 20. A "request for reimbursement" from the special disability fund
32 means an application to the special disability fund for reimbursement
33 for specific costs, subsequent to a determination by the board that the
34 special disability fund is liable to provide reimbursement on the claim.

35 21. The "workers' compensation rating board" or the "New York workers'
36 compensation rating board" shall mean the compensation insurance rating
37 board until February first, two thousand eight, and thereafter such
38 entity as is designated by law.

39 22. "Cost of compensation" means the amount that an employer must pay
40 to secure compensation as calculated in accordance with regulation of
41 the board or, in the absence of such regulation, based on average market
42 rates for a comparable employer.

43 23. "Special disability fund advisory committee" shall mean an advi-
44 sory committee to the workers' compensation board, acting by a majority
45 thereof, solely with respect to the special fund entitled the special

1 disability fund, composed of the director of the budget, the commission-
2 er of labor, the commissioner of taxation and finance, the chair of the
3 workers' compensation board, and the superintendent of insurance.

4 § 2. Paragraph (a) of subdivision 6 of section 15 of the workers'
5 compensation law, as amended by chapter 924 of the laws of 1990, is
6 amended to read as follows:

7 (a) Compensation for permanent or temporary total disability due to an
8 accident or disablement resulting from an occupational disease that
9 occurs, (1) on or after January first, nineteen hundred seventy-eight,
10 shall not exceed one hundred twenty-five dollars per week, that occurs
11 (2) on or after July first, nineteen hundred seventy-eight, shall not
12 exceed one hundred eighty dollars per week, that occurs (3) on or after
13 January first, nineteen hundred seventy-nine, shall not exceed two
14 hundred fifteen dollars per week, that occurs (4) on or after July
15 first, nineteen hundred eighty-three, shall not exceed two hundred
16 fifty-five dollars per week, that occurs (5) on or after July first,
17 nineteen hundred eighty-four, shall not exceed two hundred seventy-five
18 dollars per week, that occurs (6) on or after July first, nineteen
19 hundred eighty-five, shall not exceed three hundred dollars per week,
20 that occurs (7) on or after July first, nineteen hundred ninety, shall
21 not exceed three hundred forty dollars per week; and in the case of
22 temporary total disability shall not be less than thirty dollars per
23 week and in the case of permanent total disability shall not be less
24 than twenty dollars per week except that if the employee's wages at the
25 time of injury are less than thirty or twenty dollars per week respec-
26 tively, he or she shall receive his or her full weekly wages. Compen-
27 sation for permanent or temporary partial disability due to an accident
28 or disablement resulting from an occupational disease that occurs (1) on

29 or after January first, nineteen hundred seventy-eight, shall not exceed
30 one hundred five dollars per week, that occurs (2) on or after July
31 first, nineteen hundred eighty-three, shall not exceed one hundred twen-
32 ty-five dollars per week, that occurs (3) on or after July first, nine-
33 teen hundred eighty-four, shall not exceed one hundred thirty-five
34 dollars per week, that occurs (4) on or after July first, nineteen
35 hundred eighty-five, shall not exceed one hundred fifty dollars per
36 week, that occurs (5) on or after July first, nineteen hundred ninety,
37 shall not exceed two hundred eighty dollars per week; nor be less than
38 twenty dollars per week; except that if the employee's wages at the time
39 of injury are less than twenty dollars per week, he or she shall receive
40 his or her full weekly wages. In no event shall compensation when
41 combined with decreased earnings or earning capacity exceed the amount
42 of wages which the employee was receiving at the time the injury
43 occurred. Compensation for permanent or temporary partial disability, or
44 for permanent or temporary total disability due to an accident or disa-
45 blement resulting from an occupational disease that occurs (1) on or
46 after July first, nineteen hundred ninety-one and prior to July first,
47 nineteen hundred ninety-two, shall not exceed three hundred fifty
48 dollars per week; (2) on or after July first, nineteen hundred ninety-
49 two, shall not exceed four hundred dollars per week; nor be less than
50 forty dollars per week except that if the employee's wages at the time
51 of injury are less than forty dollars per week, the employee shall
52 receive his or her full wages. Compensation for permanent or temporary
53 partial disability, or for permanent or temporary total disability due
54 to an accident or disablement resulting from an occupational disease
55 that occurs (1) on or after July first, two thousand seven shall not
56 exceed five hundred dollars per week, (2) on or after July first, two

1 thousand eight shall not exceed five hundred fifty dollars per week, (3)
2 on or after July first, two thousand nine shall not exceed six hundred
3 dollars per week, and (4) on or after July first, two thousand ten, and
4 on or after July first of each succeeding year, shall not exceed two-
5 thirds of the New York state average weekly wage for the year in which
6 it is reported. Compensation for permanent or temporary partial disabil-
7 ity, or for permanent or temporary total disability due to an accident
8 or disablement resulting from an occupational disease that occurs on or
9 after July first, two thousand seven shall not be less than one hundred
10 dollars per week except that if the employee's wages at the time of
11 injury are less than one hundred dollars per week, the employee shall
12 receive his or her full wages. In no event shall compensation when
13 combined with decreased earnings or earning capacity exceed the amount
14 of wages the employee was receiving at the time the injury occurred.

15 § 3. Subdivision 5 of section 16 of the workers' compensation law, as
16 amended by chapter 924 of the laws of 1990, is amended to read as
17 follows:

18 5. Any excess of wages over: (1) seven hundred fifty dollars shall not
19 be taken into account in computing compensation under this section in
20 cases where the death occurs on or after July first, two thousand seven,
21 (2) eight hundred twenty-five dollars shall not be taken into account in
22 computing compensation under this section in cases where the death
23 occurs on or after July first, two thousand eight, (3) nine hundred
24 dollars shall not be taken into account in computing compensation under
25 this section in cases where the death occurs on or after July first, two
26 thousand nine, and (4) where the death occurs on or after July first,
27 two thousand ten, or when the death occurs on or after July first of
28 each succeeding year, an amount equal to the New York state average

29 weekly wage for the year in which it is reported shall not be taken into
30 account in computing compensation under this section. Any excess of
31 wages over five hundred ten dollars and five cents per week shall not be
32 taken into account in computing compensation under this section in cases
33 where the death occurs on or after July first, nineteen hundred ninety,
34 nor shall any excess of wages over five hundred twenty-five dollars per
35 week be taken into account in computing compensation pursuant to this
36 section in cases where death occurs on or after July first, nineteen
37 hundred ninety-one, nor shall any excess of wages over six hundred
38 dollars per week be taken into account in computing compensation pursu-
39 ant to this section in cases where death occurs on or after July first,
40 nineteen hundred ninety-two; nor shall any excess of wages over three
41 hundred eighty-two dollars and fifty cents per week be taken into
42 account in computing compensation under this section in cases where the
43 death occurs on or after July first, nineteen hundred eighty-three, nor
44 shall any excess of wages over four hundred twelve dollars and fifty
45 cents per week be taken into account in computing compensation under
46 this section in cases where the death occurs on or after July first,
47 nineteen hundred eighty-four, nor shall any excess of wages over four
48 hundred fifty dollars per week be taken into account in computing
49 compensation under this section in cases where the death occurs on or
50 after July first, nineteen hundred eighty-five; nor shall any excess of
51 wages over one hundred eighty-seven dollars and fifty cents per week on
52 or after January first, nineteen hundred seventy-eight or over two
53 hundred seventy dollars per week on or after July first, nineteen
54 hundred seventy-eight or over three hundred twenty-two dollars and fifty
55 cents per week on or after January first, nineteen hundred seventy-nine,
56 and prior to July first, nineteen hundred eighty-three, be taken into

1 account in computing compensation under this section nor shall any
2 excess of wages over six hundred and seventeen dollars and fifty cents a
3 month be taken into account in computing compensation under this section
4 in cases where the death occurred on or after July first, nineteen
5 hundred seventy-four, and prior to January first, nineteen hundred
6 seventy-eight, nor shall any excess of wages over five hundred and twen-
7 ty dollars a month be taken into account in computing compensation in
8 cases where death occurred on or after July first, nineteen hundred
9 seventy and prior to July first, nineteen hundred seventy-four, nor
10 shall any excess of wages over four hundred and fifty-five dollars a
11 month be taken into account in computing compensation in cases where
12 death occurred on or after July first, nineteen hundred sixty-eight and
13 prior to July first, nineteen hundred seventy, nor shall any excess of
14 wages over three hundred and ninety dollars a month be taken into
15 account in computing compensation in cases where death occurred on or
16 after July first, nineteen hundred sixty-five and prior to July first,
17 nineteen hundred sixty-eight, nor shall any excess of wages over three
18 hundred and fifty-seven dollars and fifty cents a month be taken into
19 account in computing compensation in cases where death occurred on or
20 after July first, nineteen hundred sixty-two and prior to July first,
21 nineteen hundred sixty-five, nor shall any excess of wages over three
22 hundred and twenty-five dollars a month be taken into account in comput-
23 ing compensation in cases where death occurred on or after July first,
24 nineteen hundred sixty and prior to July first, nineteen hundred sixty-
25 two, nor shall any excess of wages over two hundred and ninety-two
26 dollars and fifty cents a month be taken into account in computing
27 compensation where death occurred on or after July first, nineteen
28 hundred fifty-eight and prior to July first, nineteen hundred sixty, nor

29 shall any excess of wages over two hundred and sixty dollars a month be
30 taken into account in computing compensation where death occurred on or
31 after July first, nineteen hundred fifty-four and prior to July first,
32 nineteen hundred fifty-eight, nor shall any excess of wages over two
33 hundred and twenty-seven dollars and fifty cents a month be taken into
34 account in computing compensation where death occurred on or after July
35 first, nineteen hundred forty-eight and prior to July first, nineteen
36 hundred fifty-four, nor shall any excess of wages over one hundred and
37 eighty-two dollars a month be taken into account in computing compen-
38 sation where the death occurred on or after June first, nineteen hundred
39 forty-six and prior to July first, nineteen hundred forty-eight. When
40 death occurred on or after July first, nineteen hundred forty-eight and
41 prior to January first, nineteen hundred seventy-eight, computing
42 compensation to the widow or widower and children of a deceased employee
43 in no event shall wages be deemed to be less than one hundred and thirty
44 dollars a month. All questions of dependency shall be determined as of
45 the time of the accident. When death occurred on or after January first,
46 nineteen hundred seventy-eight, in no event shall wages be deemed to be
47 less than forty-five dollars a week in computing compensation to the
48 widow or widower and/or children of the deceased employee.

49 § 4. Paragraph w of subdivision 3 of section 15 of the workers'
50 compensation law, as relettered by chapter 286 of the laws of 1970, is
51 amended to read as follows:

52 w. Other cases. In all other cases [~~in this class~~] of permanent
53 partial disability, the compensation shall be sixty-six and two-thirds
54 [~~per centum~~] percent of the difference between [~~his~~] the injured employ-
55 ee's average weekly wages and his or her wage-earning capacity thereaft-
56 er in the same employment or otherwise[7]. Compensation under this para-

1 graph shall be payable during the continuance of such permanent partial
2 disability, but subject to reconsideration of the degree of such impair-
3 ment by the board on its own motion or upon application of any party in
4 interest however, all compensation payable under this paragraph shall
5 not exceed (i) five hundred twenty-five weeks in cases in which the loss
6 of wage-earning capacity is greater than ninety-five percent; (ii) five
7 hundred weeks in cases in which the loss of wage-earning capacity is
8 greater than ninety percent but not more than ninety-five percent; (iii)
9 four hundred seventy-five weeks in cases in which the loss of wage-earn-
10 ing capacity is greater than eighty-five percent but not more than nine-
11 ty percent; (iv) four hundred fifty weeks in cases in which the loss of
12 wage-earning capacity is greater than eighty percent but not more than
13 eighty-five percent; (v) four hundred twenty-five weeks in cases in
14 which the loss of wage-earning capacity is greater than seventy-five
15 percent but not more than eighty percent; (vi) four hundred weeks in
16 cases in which the loss of wage-earning capacity is greater than seventy
17 percent but not more than seventy-five percent; (vii) three hundred
18 seventy-five weeks in cases in which the loss of wage-earning capacity
19 is greater than sixty percent but not more than seventy percent; (viii)
20 three hundred fifty weeks in cases in which the loss of wage-earning
21 capacity is greater than fifty percent but not more than sixty percent;
22 (ix) three hundred weeks in cases in which the loss of wage-earning
23 capacity is greater than forty percent but not more than fifty percent;
24 (x) two hundred seventy-five weeks in cases in which the loss of wage-
25 earning capacity is greater than thirty percent but not more than forty
26 percent; (xi) two hundred fifty weeks in cases in which the loss of
27 wage-earning capacity is greater than fifteen percent but not more than
28 thirty percent; and (xii) two hundred twenty-five weeks in cases in

29 which the loss of wage-earning capacity is fifteen percent or less. For
30 those claimants classified as permanently partially disabled who no
31 longer receive indemnity payments because they have surpassed their
32 number of maximum benefit weeks, the following provisions will apply:

33 (1) There will be a presumption that medical services shall continue
34 notwithstanding the completion of the time period for compensation set
35 forth in this section and the burden of going forward and the burden of
36 proof will lie with the carrier, self-insured employer or state insur-
37 ance fund in any application before the board to discontinue or suspend
38 such services. Medical services will continue during the pendency of any
39 such application and any appeals thereto.

40 (2) The board is directed to promulgate regulations that establish an
41 independent review and appeal by an outside agent or entity of the
42 board's choosing of any administrative law judge's determination to
43 discontinue or suspend medical services before a final determination of
44 the board.

45 § 5. The workers' compensation law is amended by adding a new section
46 35 to read as follows:

47 § 35. Safety net. 1. Return to work. (a) The commissioner of labor
48 will issue a report to the governor, the speaker of the assembly, the
49 majority leader of the senate, and the chairs of the labor, ways and
50 means and finance committees of the assembly and senate on or before
51 December first, two thousand seven, making recommendations as to how to
52 assure that workers categorized by the board as permanently partially
53 disabled return to gainful employment to the greatest extent practica-
54 ble. Such commissioner will consider administrative and legislative
55 remedies, and shall include estimates of cost in the report. The report
56 shall examine best practices and the laws of other jurisdictions, as

1 well as any relevant programs authorized by New York law. The report
2 shall additionally examine return to work practices as implemented by
3 carriers, the state insurance fund, employers, and the board. It shall
4 also examine the relationship of vocational rehabilitation to ultimate
5 return to work.

6 (b) The commissioner of labor will be assisted by an advisory council
7 constituted of six persons appointed by the governor as follows:

8 (i) a representative of organized labor appointed upon recommendation
9 of the New York State American Federation of Labor-Congress of Indus-
10 trial Organizations;

11 (ii) a representative of the business community appointed upon recom-
12 mendation of the Business Council of New York State, Incorporated;

13 (iii) one person upon recommendation of the majority leader of the
14 senate;

15 (iv) one person upon recommendation of the speaker of the assembly;
16 and

17 (v) two other persons in the governor's discretion.

18 2. Total industrial disability. No provision of this article shall in
19 any way be read to derogate or impair current or future claimants'
20 existing rights to apply at any time to obtain the status of total
21 industrial disability under current case law.

22 3. Extreme hardship redetermination. In cases where the loss of wage-
23 earning capacity is greater than eighty percent, a claimant may request,
24 within the year prior to the scheduled exhaustion of indemnity benefits
25 under paragraph w of subdivision three of section fifteen of this arti-
26 cle, that the board reclassify the claimant to permanent total disabili-
27 ty or total industrial disability due to factors reflecting extreme
28 hardship.

29 4. Annual safety net reporting. The commissioner of labor, in
30 conjunction with the board and the superintendent of insurance, shall
31 track all claimants who have been awarded permanent partial disability
32 status and report annually on December first, beginning in two thousand
33 eight, to the governor, the speaker of the assembly, the majority leader
34 of the senate, and the chairs of the labor, ways and means and finance
35 committees of the assembly and senate:

36 (i) The number of said claimants who have:

37 (1) returned to gainful employment;

38 (2) been recategorized as being totally industrially disabled;

39 (3) remain subject to duration limitations set forth in paragraph w of
40 subdivision three of section fifteen of this article; and

41 (4) not returned to work, and whose indemnity payments have expired.

42 (ii) The additional steps the commissioner contemplates are necessary
43 to minimize the number of workers who have neither returned to work nor
44 been recategorized from permanent partial disability.

45 § 6. Subdivision 2 of section 50 of the workers' compensation law, as
46 amended by chapter 605 of the laws of 1946, is amended to read as
47 follows:

48 2. By insuring and keeping insured the payment of such compensation
49 with any stock corporation, mutual corporation or reciprocal insurer
50 authorized to transact the business of [~~workmen's~~ workers' compensation
51 insurance in this state through a policy issued under the law of this
52 state.

53 § 7. Section 52 of the workers' compensation law, as amended by chap-
54 ter 419 of the laws of 1961, subdivisions 1 and 5 as amended by chapter
55 924 of the laws of 1990, subdivision 2 as amended by chapter 460 of the

1 laws of 1991 and subdivision 3 as amended by chapter 845 of the laws of
2 1965, is amended to read as follows:

3 § 52. Effect of failure to secure compensation. 1. (a) Failure to
4 secure the payment of compensation for five or less employees within a
5 twelve month period shall constitute a misdemeanor, and is punishable by
6 a fine of not less than [~~five hundred~~] one thousand nor more than [~~two~~
7 five thousand [~~five hundred~~] dollars [~~or imprisonment for not more than~~
8 ~~one year, or both~~]. Failure to secure the payment of compensation for
9 more than five employees within a twelve month period shall constitute a
10 class E felony, and is punishable by a fine of not less than five thou-
11 sand dollars nor more than fifty thousand dollars in addition to any
12 other penalties otherwise provided by law. It shall be an affirmative
13 defense to any criminal prosecution under this section that the employer
14 took reasonable steps to secure compensation.

15 (b) Where any person has previously been convicted of a failure to
16 secure the payment of compensation within the preceding five years, upon
17 conviction for a [~~second~~] subsequent violation such person shall be
18 guilty of a class D felony, and fined not less than [~~one~~] ten thousand
19 nor more than [~~five~~] fifty thousand dollars in addition to any other
20 penalties including fines otherwise provided by law[~~, and upon~~
21 ~~conviction for a third or subsequent violation such person may be fined~~
22 ~~up to seven thousand five hundred dollars in addition to any other~~
23 ~~penalties including fines otherwise provided by law~~].

24 (c) Where the employer is a corporation, the president, secretary and
25 treasurer thereof shall be liable for failure to secure the payment of
26 compensation under this section. It shall be an affirmative defense to
27 any action against any officer of a corporation under this section that
28 the officer took reasonable steps to ensure that the corporation secured

29 compensation, that proper internal procedures were in effect to do so,
30 and that proper internal controls existed to monitor compliance with
31 said procedures.

32 (d) If at any time an employer intentionally and materially under-
33 states or conceals payroll, or intentionally and materially misrepre-
34 sents or conceals employee duties so as to avoid proper classification
35 for calculation of premium paid to secure compensation, or intentionally
36 and materially misrepresents or conceals information pertinent to the
37 calculation of premium paid to secure compensation, such employer shall
38 be deemed to have failed to secure compensation and shall be subject to
39 the sanctions applicable to this section.

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

45 2. All fines imposed under this chapter, except as herein otherwise
46 provided, shall be paid directly and immediately by the officer collect-
47 ing the same to the chairman, and shall be paid by him into the unin-
48 sured employers' fund created under section twenty-six-a of this chap-
49 ter, provided, however, that all such fines collected by justices of
50 towns and villages shall be paid to the state comptroller in accordance
51 with the provisions of section twenty-seven of the town law and section
52 4-410 of the village law respectively.

53 3. In any prosecution hereunder the failure of the employer to file
54 with the chairman, within ten days after demand, a statement subscribed
55 by the employer and affirmed by him as true under the penalties of
56 perjury showing specifically (a) the name of the stock company, mutual

1 corporation or reciprocal insurer in which such employer is insured and
2 the number and the date of issuance and term of such policy of insur-
3 ance, or (b) that the said employer is insured with the state fund in
4 which case he shall give the number of such policy of insurance, the
5 date of issuance and term thereof, or (c) that the said employer has
6 been authorized to do business as a self-insurer pursuant to section
7 fifty of [~~the workmen's compensation law~~] this article, giving the date
8 of said authorization, or (d) a legal reason, if any, why said employer
9 is not required to secure compensation, shall constitute prima facie
10 evidence that the employer has failed to secure compensation as herein
11 required. The statement to be filed herein shall be subscribed by the
12 employer or if the employer is a corporation by one of the officers
13 herein named in which he shall state that he has read such statement
14 subscribed by him and knows the contents thereof and that same is true
15 of his own knowledge.

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

27 5. The chair, upon finding that an employer has failed for a period of
28 not less than ten consecutive days to make the provision for payment of

29 compensation required by section fifty of this [~~chapter~~] article, may
30 impose upon such employer, in addition to all other penalties, fines or
31 assessments provided for in this chapter, a penalty of [~~two hundred~~
32 ~~fifty~~] one thousand dollars for each ten day period of non-compliance or
33 a sum not in excess of two [~~percent of~~] times the cost of compensation
34 for its payroll for the period of such failure, which sum shall be paid
35 into the uninsured employers' fund created under section twenty-six-a of
36 this chapter. When an employer fails to provide business records suffi-
37 cient to enable the chair to determine the employer's payroll for the
38 period requested for the calculation of the penalty provided in this
39 section, the imputed weekly payroll for each employee, corporate offi-
40 cer, sole proprietor, or partner shall be the New York state average
41 weekly wage, multiplied by 1.5. Where the employer is a corporation, the
42 president, secretary and treasurer thereof shall be liable for the
43 penalty. If the employer shall within thirty days after notice of the
44 imposition of a penalty by the chair pursuant to this subdivision make
45 an application in affidavit form for a redetermination review of such
46 penalty the chairman shall make a decision in writing on the issues
47 raised on such application.

48 § 8. Section 131 of the workers' compensation law, as amended by chap-
49 ter 135 of the laws of 1998, is amended to read as follows:

50 § 131. Payroll records. (1) Every employer subject to the provisions
51 of this chapter shall keep a true and accurate record of the number of
52 his or her employees, the classification of employees, information
53 regarding employee accidents and the wages paid by him or her for a
54 period of four years after each entry therein, which records shall be
55 open to inspection at any time, and as often as may be necessary to
56 verify the same by investigators of the board, by the authorized audi-

1 tors, accountants or inspectors of the carrier with whom the employer is
2 insured, or by the authorized auditors, accountants or inspectors of any
3 workers' compensation insurance rating board or bureau operating under
4 the authority of the insurance law and of which board or bureau such
5 carrier is a member or the group trust of which the employer is a
6 member. Any and all records required by law to be kept by such employer
7 upon which the employer makes or files a return concerning wages paid to
8 employees shall form part of the records described in this section and
9 shall be open to inspection in the same manner as provided in this
10 section. Any employer who shall fail to keep such records, who shall
11 willfully fail to furnish such record as required in this section or who
12 shall falsify any such records, shall be guilty of a misdemeanor and
13 subject to a fine of not less than five nor more than ten thousand
14 dollars in addition to any other penalties otherwise provided by law,
15 except that any such employer that has previously been subject to crimi-
16 nal penalties under this section within the prior ten years shall be
17 guilty of a class E felony, and subject to a fine of not less than ten
18 nor more than twenty-five thousand dollars in addition to any penalties
19 otherwise provided by law.

20 (2) Employers subject to [~~subdivision~~] subsection (e) of section two
21 thousand three hundred four of the insurance law and subdivision two of
22 section eighty-nine of this chapter shall keep a true and accurate
23 record of hours worked for all construction classification employees.
24 The willful failure to keep such record, or the knowing falsification of
25 any such record, may be prosecuted as insurance fraud in accordance with
26 the provisions of section 176.05 of the penal law.

27 (3) The chair, upon finding that an employer has failed to keep true
28 and accurate records as required by this section, may impose upon such

29 employer, in addition to all other penalties, fines or assessments
30 provided for in this chapter, one thousand dollars for each ten day
31 period of non-compliance or a sum not in excess of two times the cost of
32 compensation for its payroll for the period of such violation, which sum
33 shall be paid into the uninsured employers' fund created under section
34 twenty-six-a of this chapter. When an employer fails to provide business
35 records sufficient to enable the chair to determine the employer's
36 payroll for the period requested for the calculation of the penalty
37 provided in this section, the imputed weekly payroll for each employee,
38 corporate officer, sole proprietor, or partner shall be the New York
39 state average weekly wage, multiplied by 1.5. Where the employer is a
40 corporation, the corporation and any of the following shall be liable
41 for the penalty provided in this subdivision: the president, secretary
42 and treasurer. If the employer shall within thirty days after notice of
43 the imposition of a penalty by the chair pursuant to this subdivision
44 make an application in affidavit form for a redetermination review of
45 such penalty, the chair shall make a decision in writing on the issues
46 raised on such application.

47 § 9. Subdivision 4 of section 114 of the workers' compensation law, as
48 amended by chapter 635 of the laws of 1996, is amended and a new subdi-
49 vision 5 is added to read as follows:

50 4. Consistent with the provisions of the criminal procedure law, in
51 any prosecution alleging a violation of subdivision one, two or three of
52 this section, or sections fifty-two and one hundred thirty-one of this
53 chapter, in which the act or acts alleged may also constitute a
54 violation of the penal or other law, the prosecuting official may charge
55 a person pursuant to the provisions of this section and in the same
56 accusatory instrument with a violation of such other law.

1 5. A person (a) who is convicted of a second or subsequent offense
2 under this section within ten years of the prior conviction, or (b) who
3 violates any provision of this section concerning two or more claimants,
4 shall be guilty of a class D felony.

5 § 10. Section 114-a of the workers' compensation law is amended by
6 adding a new subdivision 3 to read as follows:

7 3. If the board or any court having jurisdiction over proceedings in
8 respect of any claim for compensation determines that the proceedings in
9 respect of such claim, including any appeals, have been instituted or
10 continued without reasonable ground:

11 (i) the cost of such proceedings shall be assessed against the party
12 who has so instituted or continued the proceedings, which shall be paya-
13 ble to the board for administrative expenses pursuant to section one
14 hundred fifty-one of this chapter;

15 (ii) reasonable attorneys' fees shall be assessed against an attorney
16 or licensed representative who has instituted or continued proceedings
17 without reasonable grounds, which assessment shall be payable to the
18 board for administrative expenses pursuant to section one hundred
19 fifty-one of this chapter. Fees awarded under this provision may not be
20 recouped from the party; and

21 (iii) such assessments shall be in addition to any other penalty
22 permitted under this chapter.

23 § 11. Section 141 of the workers' compensation law, as amended by
24 chapter 398 of the laws of 1997, is amended to read as follows:

25 § 141. General powers and duties of the [~~chairman~~ chair]. The [~~chair-~~
26 ~~man~~ chair] shall be the administrative head of the workers' compensation
27 board and shall exercise the powers and perform the duties in relation
28 to the administration of this chapter heretofore vested in the commis-

29 sioner of labor by chapter fifty of the laws of nineteen hundred twen-
30 ty-one, and acts amendatory thereof, and by this chapter excepting arti-
31 cle six thereof, and except in so far as such powers and duties are
32 vested by this chapter in the workers' compensation board. The [~~chair-~~
33 ~~man~~] chair shall preside at all meetings of the board and shall appoint
34 all committees and panels of the board; shall designate the times and
35 places for the hearing of claims under this chapter and shall perform
36 all administrative functions of the board as in this chapter set forth.
37 The [~~chairman~~] chair, in the name of the board, shall enforce all the
38 provisions of this chapter, and may make administrative regulations and
39 orders providing for the receipt, indexing and examining of all notices,
40 claims and reports, for the giving of notice of hearings and of deci-
41 sions, for certifying of records, for the fixing of the times and places
42 for the hearing of claims, and for providing for the conduct of hearings
43 and establishing of calendar practice to the extent not inconsistent
44 with the rules of the board. The [~~chairman~~] chair shall issue and may
45 revoke certificates of authorization of physicians, chiropractors and
46 podiatrists as provided in sections thirteen-a, thirteen-k and thir-
47 teen-1 of this chapter, and licenses for medical bureaus and x-ray and
48 other laboratories under the provisions of section thirteen-c of this
49 chapter, issue stop work orders as provided in section one hundred
50 forty-one-a of this article, and shall have and exercise all powers not
51 otherwise provided for herein in relation to the administration of this
52 chapter heretofore expressly conferred upon the commissioner of labor by
53 any of the provisions of this chapter, or of the labor law. The [~~chair-~~
54 ~~man~~] chair, on behalf of the workers' compensation board, shall enter
55 into the agreement provided for in section one hundred seventy-one-h of
56 the tax law, and shall take such other actions as may be necessary to

1 carry out the agreement provided for in such section for matching bene-
2 ficiary records of workers' compensation with information provided by
3 employers to the state directory of new hires for the purposes of veri-
4 fying eligibility for such benefits and for administering workers'
5 compensation.

6 § 12. The workers' compensation law is amended by adding a new section
7 141-a to read as follows:

8 § 141-a. Civil enforcement. 1. To investigate violations of sections
9 fifty-two and one hundred thirty-one of this chapter, the chair or his
10 or her designees shall have the power to:

11 (a) Enter and inspect any place of business at any reasonable time for
12 the purpose of investigating employer compliance.

13 (b) Examine and copy business records.

14 (c) Administer oaths and affirmations.

15 (d) Issue and serve subpoenas for attendance of witnesses or
16 production of business records, books, papers, correspondence, memoran-
17 da, and other records. Such subpoenas may be served without the state on
18 any defendant over whom a New York court would have personal jurisdic-
19 tion under the civil practice law and rules as to the subject matter
20 under investigation, provided the information or testimony sought bears
21 a reasonable relationship to the subject matter under investigation.

22 2. The chair shall specify by rule the business records that employers
23 must maintain and produce to comply with this section.

24 3. If a person has refused to obey a subpoena, the chair may commence
25 an action in supreme court of any county where venue is proper for an
26 order requiring compliance with the subpoena. Costs, including reason-
27 able attorney's fees, incurred by the chair to obtain and enforce an
28 order granting, in whole or in part, a petition to enforce a subpoena

29 shall be taxed against the subpoenaed party.

30 4. (a) Whenever the chair determines that an employer who is required
31 to secure compensation in accordance with this chapter has failed to
32 secure such compensation, or where an employer has failed to pay penal-
33 ties assessed against it pursuant to this chapter, such failure shall be
34 deemed an immediate serious danger to public health, safety, or welfare
35 sufficient to justify service by the chair of a stop-work order on the
36 employer, requiring the cessation of all business operations effective
37 immediately, except where the employer's failure concerns only domestic
38 or child care workers in his or her own household. The chair may issue
39 such order, which shall take effect as to a particular employer worksite
40 when served at that worksite, or as to all employer worksites in the
41 state for which the employer is not in compliance when served on the
42 employer. A stop-work order may be served with regard to an employer's
43 worksite by posting a copy of the stop-work order in a conspicuous
44 location at the worksite. The order shall remain in effect until the
45 chair directs that the stop-work order be removed, upon a determination
46 that the employer has come into compliance with the coverage require-
47 ments of this chapter and has paid any penalty assessed under this chap-
48 ter. If the employer shall within thirty days after notice of the stop-
49 work order make an application in affidavit form for a redetermination
50 review of such order the chair shall make a decision in writing on the
51 issues raised in such application. The chair may direct a conditional
52 release from a stop-work order upon a finding that the employer has
53 complied with coverage requirements of this chapter and has agreed to
54 remit periodic payments of the penalty pursuant to a payment agreement
55 schedule with the chair. If an agreement or order of conditional release
56 is issued, failure by the employer to meet any term or condition of such

1 payment agreement shall result in the immediate reinstatement of the
2 stop-work order and the entire unpaid balance of the penalty shall
3 become immediately due. The chair may require an employer who is found
4 to have failed to comply with the coverage requirements of this chapter
5 to file with the board, as a condition of release from a stop-work
6 order, periodic reports for a probationary period that shall not exceed
7 two years, and that demonstrate the employer's continued compliance with
8 this chapter. The board shall by rule specify the reports required and
9 the time for filing under this subdivision.

10 (b) A stop-work order issued against an employer under this section
11 shall be in effect against any non-compliant substantially-owned affil-
12 iated entity.

13 5. The chair may file a complaint in the supreme court of any county
14 where venue is proper: (a) to enjoin any employer from violating a stop-
15 work order; or (b) to enjoin any other practice prohibited by section
16 fifty-two or one hundred thirty-one of this chapter. In any action
17 brought by the chair pursuant to this section in which it prevails, the
18 court may award costs, including the reasonable costs of investigation
19 and reasonable attorneys' fees.

20 6. Any judgment obtained by the chair and any penalty due under this
21 section shall, until collected, constitute a lien upon the entire inter-
22 est of the employer, legal or equitable, in any property, real or
23 personal, tangible or intangible; however, such lien is subordinate to
24 claims for unpaid wages and any prior recorded liens, and a lien created
25 by this section is not valid against any person who, subsequent to such
26 lien and in good faith and for value, purchases real or personal proper-
27 ty from such employer or becomes the mortgagee on real or personal prop-
28 erty of such employer, or against a subsequent attaching creditor,

29 unless, with respect to real estate of the employer, a notice of the
30 lien is recorded in the public records of the county where the real
31 estate is located, and with respect to personal property of the employ-
32 er, the notice is recorded with the secretary of state.

33 7. In any court proceedings under this section, the chair shall be
34 represented by the attorney general.

35 § 13. The workers' compensation law is amended by adding a new section
36 141-b to read as follows:

37 § 141-b. Suspension and debarment. Any person subject to a final
38 assessment of civil fines or penalties or a stop-work order, or that has
39 been convicted of a misdemeanor for a violation of sections twenty-six,
40 fifty-two or one hundred thirty-one of this chapter, and any substan-
41 tially-owned affiliated entity of such person, shall be ineligible to
42 submit a bid on or be awarded any public work contract or subcontract
43 with the state, any municipal corporation or public body for a period of
44 one year from the final determination or conviction. Any person
45 convicted of a felony under this article, or a misdemeanor under
46 sections one hundred twenty-five and one hundred twenty-five-a of this
47 chapter shall be ineligible to submit a bid on or be awarded any public
48 work contract or subcontract with the state, any municipal corporation
49 or public body for a period of five years from such conviction.

50 § 14. The workers' compensation law is amended by adding a new section
51 141-c to read as follows:

52 § 141-c. Coordination of forms. The board, the commissioner of labor,
53 the commissioner of taxation and finance, the commissioner of motor
54 vehicles, and the superintendent of insurance shall consult on an ongo-
55 ing basis to coordinate the amendment of forms used to gather data help-
56 ful in identifying fraud, so as to promote effective use and sharing of

1 such information for identifying fraud in the area of workers' compen-
2 sation. Through such consultations and other means, these agencies shall
3 study the implementation of appropriate practicable technology to verify
4 the authenticity of forms, including certificates of coverage.

5 § 15. The workers' compensation law is amended by adding a new section
6 114-c to read as follows:

7 § 114-c. Multiple offenses. Any provision of this chapter which
8 imposes additional penalties for a second or subsequent offense shall
9 apply whenever the prior offense was committed by a substantially owned
10 affiliated entity of the party subject to penalty.

11 § 16. Subdivision 5 of section 136 of the workers' compensation law,
12 as added by chapter 635 of the laws of 1996, is amended to read as
13 follows:

14 5. Disclosure of information. The inspector general shall not publicly
15 disclose information which is:

16 (a) a part of an ongoing investigation or prosecution; or

17 (b) specifically prohibited from disclosure by any other provision of
18 law.

19 The disclosure of information in order to coordinate investigations
20 with the insurance frauds bureau of the department of insurance, includ-
21 ing the unit for workers' compensation insurance frauds investigations
22 within such insurance frauds bureau, and any frauds investigations unit
23 of the state insurance fund, to provide the report required by paragraph
24 (c) of subdivision three of this section or to apprise the chair of
25 ongoing investigations shall not be considered public disclosure for
26 purposes of this section.

27 § 17. Section 406 of the insurance law, as amended by chapter 635 of
28 the laws of 1996, is amended to read as follows:

29 § 406. Immunity. In the absence of fraud or bad faith, no person shall
30 be subject to civil liability, and no civil cause of action of any
31 nature shall arise against such person (i) for any information relating
32 to suspected fraudulent insurance transactions furnished to law enforce-
33 ment officials, their agents and employees; and (ii) for any information
34 relating to suspected fraudulent insurance transactions furnished to
35 other persons subject to the provisions of this chapter; and (iii) for
36 any such information furnished in reports to the insurance frauds
37 bureau, its agents or employees or [~~the workers' compensation fraud~~
38 ~~inspector general~~] any state agency investigating fraud or misconduct
39 relating to workers' compensation insurance, its agents or employees.
40 Nor shall the superintendent or any employee of the insurance frauds
41 bureau, in the absence of fraud or bad faith, be subject to civil
42 liability and no civil cause of action of any nature shall arise against
43 them by virtue of the publication of any report or bulletin related to
44 the official activities of the insurance frauds bureau. Nothing herein
45 is intended to abrogate or modify in any way any common law privilege of
46 immunity heretofore enjoyed by any person.

47 § 18. Paragraph 3 of subsection (e) of section 697 of the tax law, as
48 amended by chapter 748 of the laws of 2005, is amended to read as
49 follows:

50 (3) Nothing herein shall be construed to prohibit the department, its
51 officers or employees from furnishing information to the office of
52 temporary and disability assistance relating to the payment of the cred-
53 it for certain household and dependent care services necessary for gain-
54 ful employment under subsection (c) of section six hundred six of this
55 article and the earned income credit under subsection (d) of section six
56 hundred six of this article, or pursuant to a local law enacted by a

1 city having a population of one million or more pursuant to subsection
2 (f) of section thirteen hundred ten of this chapter, only to the extent
3 necessary to calculate qualified state expenditures under paragraph
4 seven of subdivision (a) of section four hundred nine of the federal
5 social security act or to document the proper expenditure of federal
6 temporary assistance for needy families funds under section four hundred
7 three of such act. The office of temporary and disability assistance may
8 redisclose such information to the United States department of health
9 and human services only to the extent necessary to calculate such quali-
10 fied state expenditures or to document the proper expenditure of such
11 federal temporary assistance for needy families funds. Nothing herein
12 shall be construed to prohibit the delivery by the commissioner to a
13 commissioner of jurors, appointed pursuant to section five hundred four
14 of the judiciary law, or, in counties within cities having a population
15 of one million or more, to the county clerk of such county, of a mailing
16 list of individuals to whom income tax forms are mailed by the commis-
17 sioner for the sole purpose of compiling a list of prospective jurors as
18 provided in article sixteen of the judiciary law. Provided, however,
19 such delivery shall only be made pursuant to an order of the chief
20 administrator of the courts, appointed pursuant to section two hundred
21 ten of the judiciary law. No such order may be issued unless such chief
22 administrator is satisfied that such mailing list is needed to compile a
23 proper list of prospective jurors for the county for which such order is
24 sought and that, in view of the responsibilities imposed by the various
25 laws of the state on the department, it is reasonable to require the
26 commissioner to furnish such list. Such order shall provide that such
27 list shall be used for the sole purpose of compiling a list of prospec-
28 tive jurors and that such commissioner of jurors, or such county clerk,

29 shall take all necessary steps to insure that the list is kept confiden-
30 tial and that there is no unauthorized use or disclosure of such list.
31 Furthermore, nothing herein shall be construed to prohibit the delivery
32 to a taxpayer or his or her duly authorized representative of a certi-
33 fied copy of any return or report filed in connection with his or her
34 tax or to prohibit the publication of statistics so classified as to
35 prevent the identification of particular reports or returns and the
36 items thereof, or the inspection by the attorney general or other legal
37 representatives of the state of the report or return of any taxpayer or
38 of any employer filed under section one hundred seventy-one-h of this
39 chapter, where such taxpayer or employer shall bring action to set aside
40 or review the tax based thereon, or against whom an action or proceeding
41 under this chapter or under this chapter and article eighteen of the
42 labor law has been recommended by the commissioner, the commissioner of
43 labor with respect to unemployment insurance matters, or the attorney
44 general or has been instituted, or the inspection of the reports or
45 returns required under this article by the comptroller or duly desig-
46 nated officer or employee of the state department of audit and control,
47 for purposes of the audit of a refund of any tax paid by a taxpayer
48 under this article, or the furnishing to the state department of labor
49 of unemployment insurance information obtained or derived from quarterly
50 combined withholding, wage reporting and unemployment insurance returns
51 required to be filed by employers pursuant to paragraph four of
52 subsection (a) of section six hundred seventy-four of this article, for
53 purposes of administration of such department's [~~employment security~~
54 ~~programs, evaluation of employment and training programs for which such~~
55 ~~department has administrative, reporting, monitoring or evaluating~~
56 ~~responsibilities~~] unemployment insurance program, employment services

1 program, federal and state employment and training programs, employment
2 statistics and labor market information programs, worker protection
3 programs, federal programs for which the department has administrative
4 responsibility or for other purposes deemed appropriate by the commis-
5 sioner of labor consistent with the provisions of the labor law, and
6 redisclosure of such information [~~when necessary to enable such depart-~~
7 ~~ment to comply with~~] in accordance with the provisions of [~~section~~]
8 sections five hundred thirty-six and five hundred thirty-seven of the
9 labor law or any other applicable law, or the furnishing to the state
10 office of temporary and disability assistance of information obtained or
11 derived from New York state personal income tax returns as described in
12 paragraph (b) of subdivision two of section one hundred seventy-one-g of
13 this chapter for the purpose of reviewing support orders enforced pursu-
14 ant to title six-A of article three of the social services law to aid in
15 the determination of whether such orders should be adjusted, or the
16 furnishing of information obtained from the reports required to be
17 submitted by employers regarding newly hired or re-hired employees
18 pursuant to section one hundred seventy-one-h of this chapter to the
19 state office of temporary and disability assistance, the state depart-
20 ment of health, the state department of labor and the workers' compen-
21 sation board for purposes of administration of the child support
22 enforcement program, verification of individuals' eligibility for one or
23 more of the programs specified in subsection (b) of section eleven
24 hundred thirty-seven of the federal social security act and for other
25 public assistance programs authorized by state law, and administration
26 of the state's employment security and workers' compensation programs,
27 and to the national directory of new hires established pursuant to
28 section four hundred fifty-three-A of the federal social security act

29 for the purposes specified in such section, or the furnishing to the
30 state office of temporary and disability assistance of the amount of an
31 overpayment of income tax and interest thereon certified to the comp-
32 troller to be credited against past-due support pursuant to section one
33 hundred seventy-one-c of this chapter and of the name and social securi-
34 ty number of the taxpayer who made such overpayment, or the disclosing
35 to the commissioner of finance of the city of New York, pursuant to
36 section one hundred seventy-one-l of this chapter, of the amount of an
37 overpayment and interest thereon certified to the comptroller to be
38 credited against a city of New York tax warrant judgment debt and of the
39 name and social security number of the taxpayer who made such overpay-
40 ment, or the furnishing to the New York state higher education services
41 corporation of the amount of an overpayment of income tax and interest
42 thereon certified to the comptroller to be credited against the amount
43 of a default in repayment of a guaranteed student loan pursuant to
44 section one hundred seventy-one-d of this chapter and of the name and
45 social security number of the taxpayer who made such overpayment, or the
46 furnishing to the state department of health of the information required
47 by subdivision two-a of section two thousand five hundred eleven of the
48 public health law, or the furnishing to the state university of New York
49 or the city university of New York respectively or the attorney general
50 on behalf of such state or city university the amount of an overpayment
51 of income tax and interest thereon certified to the comptroller to be
52 credited against the amount of a default in repayment of a state univer-
53 sity loan pursuant to section one hundred seventy-one-e of this chapter
54 and of the name and social security number of the taxpayer who made such
55 overpayment, or the disclosing to a state agency, pursuant to section
56 one hundred seventy-one-f of this chapter, of the amount of an overpay-

1 ment and interest thereon certified to the comptroller to be credited
2 against a past-due legally enforceable debt owed to such agency and of
3 the name and social security number of the taxpayer who made such over-
4 payment, or the furnishing of employee and employer information obtained
5 through the wage reporting system, pursuant to section one hundred
6 seventy-one-a of this chapter, as added by chapter five hundred forty-
7 five of the laws of nineteen hundred seventy-eight, to the state office
8 of temporary and disability assistance for the purpose of verifying
9 eligibility for and entitlement to amounts of benefits under the social
10 services law or similar law of another jurisdiction, locating absent
11 parents or other persons legally responsible for the support of appli-
12 cants for or recipients of public assistance and care under the social
13 services law and persons legally responsible for the support of a recip-
14 ient of services under section one hundred eleven-g of the social
15 services law and, in appropriate cases, establishing support obligations
16 pursuant to the social services law and the family court act or similar
17 provision of law of another jurisdiction for the purpose of evaluating
18 the effect on earnings of participation in employment, training or other
19 programs designed to promote self-sufficiency authorized pursuant to the
20 social services law by current recipients of public assistance and care
21 and by former applicants and recipients of public assistance and care,
22 (except that with regard to former recipients, information which relates
23 to a particular former recipient shall be provided with client identify-
24 ing data deleted), and to the state department of labor, or other indi-
25 viduals designated by the commissioner of labor, for the purpose of the
26 administration of such department's [~~employment security programs,~~
27 ~~public assistance work programs~~] unemployment insurance program, employ-
28 ment services program, federal and state employment and training

29 programs, employment statistics and labor market information programs,
30 worker protection programs, federal programs for which the department
31 has administrative responsibility or for other purposes deemed appropri-
32 ate by the commissioner of labor consistent with the provisions of the
33 labor law[, ~~as well as for the evaluation of the effect on earnings of~~
34 ~~participation in training programs with respect to which the department~~
35 ~~of labor has reporting, monitoring, administration, or evaluation~~
36 ~~responsibilities~~], and redisclosure of such information in accordance
37 with the provisions of sections five hundred thirty-six and five hundred
38 thirty-seven of the labor law, or the furnishing of information, which
39 is obtained from the wage reporting system operated pursuant to section
40 one hundred seventy-one-a of this chapter, as added by chapter five
41 hundred forty-five of the laws of nineteen hundred seventy-eight, to the
42 state office of temporary and disability assistance so that it may
43 furnish such information to public agencies of other jurisdictions with
44 which the state office of temporary and disability assistance has an
45 agreement pursuant to paragraph (h) or (i) of subdivision three of
46 section twenty of the social services law, and to the state office of
47 temporary and disability assistance for the purpose of fulfilling obli-
48 gations and responsibilities otherwise incumbent upon the state depart-
49 ment of labor, under section one hundred twenty-four of the federal
50 family support act of nineteen hundred eighty-eight, by giving the
51 federal parent locator service, maintained by the federal department of
52 health and human services, prompt access to such information as required
53 by such act, or to the state department of health to establish eligibil-
54 ity under the child health insurance plan pursuant to subdivision two-a
55 of section two thousand five hundred eleven of the public health law and
56 to verify eligibility for the program for elderly pharmaceutical insur-

1 ance coverage under title three of article two of the elder law, or to
2 the office of vocational and educational services for individuals with
3 disabilities of the education department, the commission for the blind
4 and visually handicapped and any other state vocational rehabilitation
5 agency, for purposes of obtaining reimbursement from the federal social
6 security administration for expenditures made by such office, commission
7 or agency on behalf of disabled individuals who have achieved economic
8 self-sufficiency or to the higher education services corporation for the
9 purpose of assisting the corporation in default prevention and default
10 collection of federal guaranteed student loans through the federal fami-
11 ly education loan program as codified in chapter twenty-eight of title
12 twenty of the United States code; provided, however, that such informa-
13 tion shall be limited to the names, social security numbers, home and/or
14 business addresses, and employer names of defaulted or delinquent
15 student loan borrowers.

16 Provided, however, that with respect to employee information the
17 office of temporary and disability assistance shall only be furnished
18 with the names, social security account numbers and gross wages of those
19 employees who are (A) applicants for or recipients of benefits under the
20 social services law, or similar provision of law of another jurisdiction
21 (pursuant to an agreement under subdivision three of section twenty of
22 the social services law) or, (B) absent parents or other persons legally
23 responsible for the support of applicants for or recipients of public
24 assistance and care under the social services law or similar provision
25 of law of another jurisdiction (pursuant to an agreement under subdivi-
26 sion three of section twenty of the social services law), or (C) persons
27 legally responsible for the support of a recipient of services under
28 section one hundred eleven-g of the social services law or similar

29 provision of law of another jurisdiction (pursuant to an agreement under
30 subdivision three of section twenty of the social services law), or (D)
31 employees about whom wage reporting system information is being
32 furnished to public agencies of other jurisdictions, with which the
33 state office of temporary and disability assistance has an agreement
34 pursuant to paragraph (h) or (i) of subdivision three of section twenty
35 of the social services law, or (E) employees about whom wage reporting
36 system information is being furnished to the federal parent locator
37 service, maintained by the federal department of health and human
38 services, for the purpose of enabling the state office of temporary and
39 disability assistance to fulfill obligations and responsibilities other-
40 wise incumbent upon the state department of labor, under section one
41 hundred twenty-four of the federal family support act of nineteen
42 hundred eighty-eight, and, only if, the office of temporary and disabil-
43 ity assistance certifies to the commissioner that such persons are such
44 applicants, recipients, absent parents or persons legally responsible
45 for support or persons about whom information has been requested by a
46 public agency of another jurisdiction or by the federal parent locator
47 service and further certifies that in the case of information requested
48 under agreements with other jurisdictions entered into pursuant to
49 subdivision three of section twenty of the social services law, that
50 such request is in compliance with any applicable federal law. Provided,
51 further, that where the office of temporary and disability assistance
52 requests employee information for the purpose of evaluating the effects
53 on earnings of participation in employment, training or other programs
54 designed to promote self-sufficiency authorized pursuant to the social
55 services law, the office of temporary and disability assistance shall
56 only be furnished with the quarterly gross wages (excluding any refer-

1 ence to the name, social security number or any other information which
2 could be used to identify any employee or the name or identification
3 number of any employer) paid to employees who are former applicants for
4 or recipients of public assistance and care and who are so certified to
5 the commissioner by the commissioner of the office of temporary and
6 disability assistance. Provided, further, that with respect to employee
7 information, the department of health shall only be furnished with the
8 information required pursuant to subdivision two-a of section two thou-
9 sand five hundred eleven of the public health law with respect to those
10 children whose eligibility under the child health insurance plan is to
11 be determined pursuant to such subdivision two-a and with respect to
12 those members of any such child's household whose income affects such
13 child's eligibility and who are so certified to the commissioner or by
14 the department of health. Provided, further, that wage reporting infor-
15 mation shall be furnished to the office of vocational and educational
16 services for individuals with disabilities of the education department,
17 the commission for the blind and visually handicapped and any other
18 state vocational rehabilitation agency only if such office, commission
19 or agency, as applicable, certifies to the commissioner that such infor-
20 mation is necessary to obtain reimbursement from the federal social
21 security administration for expenditures made on behalf of disabled
22 individuals who have achieved self-sufficiency. Reports and returns
23 shall be preserved for three years and thereafter until the commissioner
24 orders them to be destroyed.

25 § 19. Paragraph 1 of subsection (1) of section 697 of the tax law, as
26 amended by chapter 214 of the laws of 1998, is amended to read as
27 follows:

28 (1) Notwithstanding any provision of law to the contrary, the state

29 department of labor shall furnish to the department information required
30 from employers pursuant to article eighteen of the labor law, and the
31 department shall furnish to the state department of labor, or other
32 individuals designated by the commissioner of labor who are engaged in
33 purposes deemed appropriate by the commissioner of labor consistent with
34 the provisions of the labor law, [~~the name, social security number and~~
35 ~~wages of individuals, and the name and federal employer identification~~
36 ~~number of employers contained within~~] withholding tax information
37 [~~required from employers~~] obtained or derived pursuant to part V of this
38 article, or pursuant to equivalent provisions enacted under the authori-
39 ty of article thirty, thirty-A or thirty-B of this chapter [~~or article~~
40 ~~two-E of the general city law~~], and taxpayer identification information
41 acquired under any of the provisions of this chapter, for tax adminis-
42 tration and employment security [~~and public assistance work~~] program
43 purposes.

44 § 20. Subdivision 1 of section 537 of the labor law, as amended by
45 chapter 346 of the laws of 1948, is amended to read as follows:

46 1. Use of information. Information acquired from employers or employ-
47 ees pursuant to this article shall be for the exclusive use and informa-
48 tion of the commissioner in the discharge of his or her duties [~~here-~~
49 ~~under~~] under this chapter and shall not be open to the public nor be
50 used in any court in any action or proceeding pending therein unless the
51 commissioner is a party to such action or proceeding, or such action or
52 proceeding involves information provided pursuant to paragraph g of
53 subdivision three of this section, notwithstanding any other provisions
54 of law. Such information insofar as it is material to the making and
55 determination of a claim for benefits or to adjudicating a claim for
56 benefits shall be available to the parties affected and, in the commis-

1 sioner's discretion, may be made available to the parties affected in
2 connection with effecting placement.

3 § 21. Subdivision 2 of section 537 of the labor law, as amended by
4 chapter 346 of the laws of 1948, is amended to read as follows:

5 2. ~~[Penalties.]~~ Violations of the confidentiality provisions of this
6 section. Any ~~[officer or employee of the state]~~ person, who, without
7 authority of the commissioner or as otherwise required by law, shall
8 disclose ~~[such]~~ information in violation of the confidentiality
9 provisions of this section, upon conviction, shall be guilty of a misde-
10 meanor.

11 § 22. The opening paragraph and paragraph a of subdivision 3 of
12 section 537 of the labor law, as amended by chapter 442 of the laws of
13 1994, are amended to read as follows:

14 The commissioner may, however, disclose the information described in
15 ~~[subdivision]~~ subdivisions one and four of this section under the
16 following circumstances:

17 a. Federal ~~[agencies]~~ law. The commissioner shall report fully and
18 completely to the appropriate agency of the United States on the effect
19 and administration of this article in the manner prescribed by such
20 agency, and further he or she shall make information available, upon
21 request, to any federal, state or local agency ~~[of the United States~~
22 ~~charged with the administration of public works or other assistance~~
23 ~~through public employment, the name, address, ordinary occupation, and~~
24 ~~employment status of each recipient of unemployment insurance benefits,~~
25 ~~and a statement of such recipient's right to further benefit under this~~
26 ~~article. The commissioner may also make the state's records relating to~~
27 ~~the administration of this article available to the federal railroad~~
28 ~~retirement board and may furnish, at the expense of such board, such~~

29 ~~copies thereof as the federal railroad retirement board deems necessary~~
30 ~~for its purposes]~~ entitled to such information under the social security
31 act or any other federal law in the manner prescribed by such federal
32 law or its implementing regulations.

33 § 23. Subdivision 3 of section 537 of the labor law is amended by
34 adding a new paragraph g to read as follows:

35 g. Federal, state and local agencies. (i) Upon request to the commis-
36 sioner, such information may be disclosed to certain federal, state and
37 local agencies. The commissioner may require written agreements with
38 requesting agencies in a form determined by the commissioner and
39 consistent with 20 CFR 603 and other federal regulations. The informa-
40 tion that may be disclosed pursuant to this paragraph shall be disclosed
41 only after the requesting agency has demonstrated, to the commissioner's
42 satisfaction, that the information shall be kept confidential, except
43 for those purposes for which it was provided to the requesting agency,
44 and that the requesting agency has security safeguards in place to
45 prevent the unauthorized disclosure of such information.

46 (ii) The information disclosed pursuant to this paragraph may be
47 disclosed to the following agencies to be used exclusively for the
48 following legitimate governmental purposes:

49 (1) any federal, state or local agency in the investigation of fraud
50 or misuse of public funds;

51 (2) any state or United States territorial workforce agency, local
52 workforce investment board and its agents, and one-stop operating part-
53 ner receiving funds under the workforce investment act of 1998 for
54 program performance purposes and other legitimate programmatic purposes
55 authorized by the commissioner;

1 (3) the United States department of labor or its agents, as required
2 by law, or in connection with the requirements imposed as a result of
3 receiving federal administrative funding;

4 (4) state and local economic development agencies, where such informa-
5 tion is necessary to carry out the statutory functions of such agencies,
6 shall receive the employer's name, address and industry code received
7 from the registration of employers; and

8 (5) the workers' compensation board, the state insurance fund and the
9 state insurance department, for purposes of determining compliance with
10 the coverage of workers' compensation and disability insurance.

11 § 24. Subdivision 4 of section 537 of the labor law, as amended by
12 chapter 724 of the laws of 2006, is amended to read as follows:

13 4. Wage reporting information obtained by the department from the
14 state department of taxation and finance pursuant to subdivision four of
15 section one hundred seventy-one-a of the tax law, as added by chapter
16 five hundred forty-five of the laws of nineteen hundred seventy-eight,
17 and information obtained or derived from quarterly combined withholding,
18 wage reporting and unemployment insurance returns required to be filed
19 by employers pursuant to paragraph four of subsection (a) of section six
20 hundred seventy-four of the tax law shall be considered confidential and
21 shall be used for the administration of the unemployment insurance
22 program, employment services program, federal and state employment and
23 training programs, employment statistics and labor market information
24 programs, employer services program, worker protection programs, federal
25 programs for which the department has administrative responsibility or
26 for other purposes deemed appropriate by the commissioner under this
27 chapter. Such information shall not be disclosed to persons or agencies
28 other than those considered entitled to such information under the

29 social security act or other federal law, or as provided in subdivision
30 three of this section or when such disclosure is necessary for the prop-
31 er administration of the department's [~~employment security programs as
32 well as for the evaluation of the effect on earnings of participation in
33 training programs with respect to which the department has reporting,
34 monitoring or evaluating responsibilities. No such evaluations shall be
35 made with regard to data concerning individuals whose application to or
36 participation in such programs, whichever occurred later, was completed
37 more than ten years from the time of evaluation. When used for the
38 purpose of evaluating, monitoring or reporting on such programs, access
39 to such information obtained from the department of taxation and finance
40 shall be limited to that which concerns individuals who applied to or
41 participated in such programs] unemployment insurance program, employ-
42 ment services program, employment and training programs, worker
43 protection programs, federal programs for which the department has
44 administrative responsibility or for other purposes deemed appropriate
45 by the commissioner under this chapter. Any reports concerning employ-
46 ment [~~security~~] and training programs submitted to a state or federal
47 agency shall also be submitted to the governor, the temporary president
48 of the senate, the speaker of the assembly and the chairs of the labor
49 committees in the senate and the assembly.~~

50 § 25. Subdivision (a) of section 13 of the workers' compensation law,
51 as amended by chapter 451 of the laws of 1996 and the closing paragraph
52 as separately amended by chapter 635 of the laws of 1996, is amended to
53 read as follows:

54 (a) The employer shall promptly provide for an injured employee such
55 medical, dental, surgical, optometric or other attendance or treatment,
56 nurse and hospital service, medicine, optometric services, crutches,

1 eye-glasses, false teeth, artificial eyes, orthotics, prosthetic
2 devices, functional assistive and adaptive devices and apparatus for
3 such period as the nature of the injury or the process of recovery may
4 require. The employer shall be liable for the payment of the expenses of
5 medical, dental, surgical, optometric or other attendance or treatment,
6 nurse and hospital service, medicine, optometric services, crutches,
7 eye-glasses, false teeth, artificial eyes, orthotics, prosthetic
8 devices, functional assistive and adaptive devices and apparatus, as
9 well as artificial members of the body or other devices or appliances
10 necessary in the first instance to replace, support or relieve a portion
11 or part of the body resulting from and necessitated by the injury of an
12 employee, for such period as the nature of the injury or the process of
13 recovery may require, and the employer shall also be liable for replace-
14 ments or repairs of such artificial members of the body or such other
15 devices, eye-glasses, false teeth, artificial eyes, orthotics, prosth-
16 ic devices, functional assistive and adaptive devices or appliances
17 necessitated by ordinary wear or loss or damage to a [~~prothesis~~] prosth-
18 esis, with or without bodily injury to the employee. Damage to or loss
19 of a prosthetic device shall be deemed an injury except that no disabil-
20 ity benefits shall be payable with respect to such injury under section
21 fifteen of this article. Such a replacement or repair of artificial
22 members of the body or such other devices, eye-glasses, false teeth,
23 artificial eyes, orthotics, prosthetic devices, functional assistive and
24 adaptive devices or appliances or the providing of medical treatment and
25 care as defined herein shall not constitute the payment of compensation
26 under section twenty-five-a of this [~~chapter~~] article. All fees and
27 other charges for such treatment and services shall be limited to such
28 charges as prevail in the same community for similar treatment of

29 injured persons of a like standard of living.

30 The chair shall prepare and establish a schedule for the state, or
31 schedules limited to defined localities, of charges and fees for such
32 medical treatment and care, [~~to be determined~~] and including all
33 medical, dental, surgical, optometric or other attendance or treatment,
34 nurse and hospital service, medicine, optometric services, crutches,
35 eye-glasses, false teeth, artificial eyes, orthotics, prosthetic
36 devices, functional assistive and adaptive devices and apparatus in
37 accordance with and to be subject to change pursuant to rules promulgat-
38 ed by the chair. Before preparing such schedule for the state or sched-
39 ules for limited localities the chair shall request the president of the
40 medical society of the state of New York and the president of the New
41 York state osteopathic medical society to submit to him or her a report
42 on the amount of remuneration deemed by such society to be fair and
43 adequate for the types of medical care to be rendered under this chap-
44 ter, but consideration shall be given to the view of other interested
45 parties. In the case of physical therapy fees schedules the chair shall
46 request the president of a recognized professional association repres-
47 enting physical therapists in the state of New York to submit to him or
48 her a report on the amount of remuneration deemed by such association to
49 be fair and reasonable for the type of physical therapy services
50 rendered under this chapter, but consideration shall be given to the
51 views of other interested parties. The chair shall also prepare and
52 establish a schedule for the state, or schedules limited to defined
53 localities, of charges and fees for outpatient hospital services not
54 covered under the medical fee schedule previously referred to in this
55 subdivision, to be determined in accordance with and to be subject to
56 change pursuant to rules promulgated by the chair. Before preparing such

1 schedule for the state or schedules for limited localities the chair
2 shall request the president of the hospital association of New York
3 state to submit to him or her a report on the amount of remuneration
4 deemed by such association to be fair and adequate for the types of
5 hospital outpatient care to be rendered under this chapter, but consid-
6 eration shall be given to the views of other interested parties. In the
7 case of occupational therapy fees schedules the chair shall request the
8 president of a recognized professional association representing occupa-
9 tional therapists in the state of New York to submit to him or her a
10 report on the amount of remuneration deemed by such association to be
11 fair and reasonable for the type of occupational therapy services
12 rendered under this chapter, but consideration shall be given to the
13 views of other interested parties. The amounts payable by the employer
14 for such treatment and services shall be the fees and charges estab-
15 lished by such schedule. Nothing in this schedule, however, shall
16 prevent voluntary payment of amounts higher or lower than the fees and
17 charges fixed therein, but no physician rendering medical treatment or
18 care, and no physical or occupational therapist rendering their respec-
19 tive physical or occupational therapy services may receive payment in
20 any higher amount unless such increased amount has been authorized by
21 the employer, or by decision as provided in section thirteen-g of this
22 article. Nothing in this section shall be construed as preventing the
23 employment of a duly authorized physician on a salary basis by an
24 authorized compensation medical bureau or laboratory.

25 § 26. Section 13 of the workers' compensation law is amended by adding
26 a new subdivision (i) to read as follows:

27 (i) (1) When a claimant or pharmacy submits a claim to the employer or
28 its carrier for payment of prescribed medicine or for reimbursement of

29 the cost of prescribed medicine which the employer is required to
30 provide under this section, the employer or carrier shall pay the amount
31 prescribed by the fee schedule adopted under section thirteen-o of this
32 article, or if the prescribed medicine is not included on the current
33 fee schedule, the usual and customary charges for such prescribed medi-
34 cine, within forty-five days of receipt of the claim, unless the liabil-
35 ity of the employer or carrier on the claim for which the claimant seeks
36 payment or reimbursement of payment for the prescribed medicine is not
37 established, or the prescribed medicine is not for a causally related
38 condition.

39 (2) Where the liability of the employer or carrier on the claim for
40 which the claimant seeks payment or reimbursement of payment for the
41 prescribed medicine or reimbursement for payment of prescribed medicine
42 is not established, or is not for a causally related condition, the
43 employer or carrier shall pay any undisputed portion of the claim in
44 accordance with this section and notify the claimant or pharmacy, as
45 appropriate, in writing within forty-five days of receipt of the claim:

46 (i) that the claim is not being paid and explaining the reasons for
47 nonpayment; or

48 (ii) to request all additional information reasonably needed to deter-
49 mine the employer's or carrier's liability for the claim. Upon receipt
50 of the information requested in this subparagraph, the employer or
51 carrier shall comply with paragraph one of this subdivision.

52 (3) Each claim for payment of prescribed medicine or reimbursement for
53 payment of prescribed medicine that is processed in violation of this
54 section shall constitute a separate violation. In addition to the other
55 penalties provided in this chapter, any employer or carrier that fails
56 to reimburse the claimant or pay the pharmacy, as appropriate and as

1 required in this section shall be obligated to pay to the claimant or
2 pharmacy the amount prescribed on the fee schedule adopted under section
3 thirteen-o of this article, or if the prescribed medicine is not
4 included on the current fee schedule, the usual and customary charges
5 for the prescribed medicine plus simple interest at the rate set forth
6 in section five thousand four of the civil practice law and rules.

7 (4) Nothing in this subdivision shall prohibit employers or carriers
8 from agreeing to or arranging for direct billing by the pharmacy to the
9 employer or carrier for the cost of prescribed medicine, in order for
10 claimants to more promptly receive prescribed medicine for which employ-
11 ers and carriers are liable under this section.

12 (5) Notwithstanding any other provision of this chapter, if an employ-
13 er or carrier has contracted with a pharmacy to provide prescribed medi-
14 cine to claimants, then such employer or carrier may require claimants
15 to obtain all prescribed medicines from the pharmacy with which it has
16 contracted, except if a medical emergency occurs and it would not be
17 reasonably possible to obtain immediately required prescribed medicine
18 from the pharmacy with which the employer or carrier has a contract. An
19 employer or carrier that requires claimants to obtain prescribed medi-
20 cines from a pharmacy with which it has a contract must notify claimants
21 of the pharmacy or pharmacies with which it has a contract, the
22 locations and addresses of the pharmacy or pharmacies, if applicable,
23 how to initially fill and refill prescriptions through the mail, inter-
24 net, telephone or other means, and any other required information that
25 must be supplied to the pharmacy or pharmacies. If the pharmacy or phar-
26 macies with which the employer or carrier contracts does not offer mail
27 order service and does not have a physical location within a reasonable
28 distance from the claimant, as defined by regulation of the board, the

29 claimant may obtain prescribed medicines at the pharmacy or pharmacies
30 of his or her choice and the employer or carrier will be liable for such
31 charges in accordance with the fee schedule prescribed in section thir-
32 teen-o of this chapter.

33 § 27. The workers' compensation law is amended by adding a new section
34 13-o to read as follows:

35 § 13-o. Pharmaceutical fee schedule. The chair shall adopt a pharma-
36 ceutical fee schedule which shall establish maximum allowable fees for
37 prescription medicines provided pursuant to this chapter. The schedule
38 shall include a single dispensing fee. Nothing in the fee schedule shall
39 preclude mail order supply of scheduled medicines, provided that the
40 fees for such mail ordered medicines do not exceed the costs provided by
41 such fee schedule. Any pharmacy providing prescription medicines shall
42 provide the generic drug equivalent, if a generic equivalent is avail-
43 able, unless the prescribing physician specifically provides otherwise
44 by prescription. The fee schedule may be modified on each succeeding
45 April first, provided, however, that usual and customary fees may be
46 charged for drugs that are not included in a then-current fee schedule,
47 but are approved for use by the chair.

48 § 28. Subdivision 5 of section 13-a of the workers' compensation law,
49 as added by chapter 21 of the laws of 1991, is amended to read as
50 follows:

51 (5) No claim for specialist consultations, surgical operations,
52 physiotherapeutic or occupational therapy procedures, x-ray examinations
53 or special diagnostic laboratory tests costing more than [~~five hundred~~]
54 one thousand dollars shall be valid and enforceable, as against such
55 employer, unless such special services shall have been authorized by the
56 employer or by the board, or unless such authorization has been unrea-

1 sonably withheld, or withheld for a period of more than thirty calendar
2 days from receipt of a request for authorization, or unless such special
3 services are required in an emergency, provided, however, that the basis
4 for a denial of such authorization by the employer must be based on a
5 conflicting second opinion rendered by a physician authorized by the
6 [~~workers' compensation~~] board. The board, with the approval of the
7 superintendent of insurance, shall issue and maintain a list of pre-au-
8 thorized procedures under this section.

9 § 29. Section 13-a of the workers' compensation law is amended by
10 adding a new subdivision 7 to read as follows:

11 (7)(a) Notwithstanding any other provision of this chapter to the
12 contrary, any insurance carrier authorized to transact the business of
13 workers' compensation insurance in this state, self-insurer or the state
14 insurance fund may contract with a network or networks, legally and
15 properly organized, to perform diagnostic tests, x-ray examinations,
16 magnetic resonance imaging, or other radiological examinations or tests
17 of claimants and may require claimant to obtain or undergo such diagnos-
18 tic test, x-ray examinations, magnetic resonance imaging or other radio-
19 logical examinations or tests with a provider or at a facility that is
20 affiliated with the network or networks with which the carrier
21 contracts, except if a medical emergency occurs requiring an immediate
22 diagnostic test, x-ray examination, magnetic resonance imaging or other
23 radiological examination or test or if the network with which the insur-
24 ance carrier, self-insurer or the state insurance fund contracts does
25 not have a provider or facility able to perform the examination or test
26 within a reasonable distance from the claimant's residence or place of
27 employment, as defined by regulation of the board.

28 (b) Any insurance carrier, self-insurer or the state insurance fund

29 which requires claimants to obtain or undergo diagnostic tests, x-ray
30 examinations, magnetic resonance imaging or other radiological examina-
31 tions or tests with a provider or at a facility affiliated with a
32 network or networks with which it contracts, must notify the claimant of
33 the name and contact information for the network or networks at the same
34 time the written statement of the claimant's rights as required by
35 subdivision two of section one hundred ten of this chapter or immediate-
36 ly after imposing such requirement if the time period within which the
37 written statement of the claimant's rights as required by subdivision
38 two of section one hundred ten of this chapter has expired.

39 (c) At the time a request for authorization for special diagnostic
40 tests, x-ray examinations, magnetic resonance imaging or other radiolog-
41 ical examinations or tests costing more than one thousand dollars as
42 required by subdivision five of this section is approved, the insurance
43 carrier, self-insurer or state insurance fund, or if so delegated the
44 network with which the insurance carrier, self-insurer or state insur-
45 ance fund has contracted, shall notify the physician requesting authori-
46 zation of the requirement that the claimant obtain or undergo the
47 special diagnostic test, x-ray examination, magnetic resonance imaging
48 or other radiological examination or test with a provider or at a facil-
49 ity affiliated with the network or networks with which it has
50 contracted, the contact information for the network and a list of the
51 providers and facilities within the claimant's geographic location, as
52 defined by regulation of the board. The claimant, in consultation with
53 the provider who requested the special diagnostic test, x-ray examina-
54 tion, magnetic resonance imaging or other radiological test or exam,
55 will determine the provider or facility from within the network which

1 will perform such diagnostic test, x-ray examination, magnetic resonance
2 imaging or other radiological examination or test.

3 (d) The results of the special diagnostic test, x-ray examination,
4 magnetic resonance imaging or other radiological test or exam must be
5 sent to the physician who requested the test or exam immediately upon
6 completion of the report detailing the results.

7 § 30. Subdivisions 1, 2 and 3 of section 21-a of the workers' compen-
8 sation law, as added by chapter 635 of the laws of 1996, are amended to
9 read as follows:

10 1. Notwithstanding any other provision of this chapter to the contra-
11 ry, in any instance in which an employer is unsure of the extent of its
12 liability for a claim for compensation by an injured employee pursuant
13 to this chapter, such employer may initiate compensation payments and
14 payments for prescribed medicine and continue such payments for one
15 year, without prejudice and without admitting liability, in accordance
16 with a notice of temporary payment of compensation, on a form prescribed
17 by the board.

18 2. The notice of temporary payment of compensation authorized by
19 subdivision one of this section shall be delivered to the injured
20 employee and the board. Such notice shall notify the injured employee
21 that the temporary payment of compensation and prescribed medicine shall
22 not be deemed to be an admission of liability by the employer for the
23 injury or injuries to the employee. The board, upon receipt of a notice
24 of temporary payment of compensation, shall send a notice to the injured
25 employee stating that:

26 (a) the board has received a notice of temporary payment of compen-
27 sation relating to such injured employee;

28 (b) the payment of temporary compensation and prescribed medicine and

29 the injured employee's acceptance of such temporary compensation and
30 prescribed medicine shall not be an admission of liability by the
31 employer, nor prejudice the claim of the injured employee;

32 (c) the payment of temporary compensation and prescribed medicine
33 shall terminate on the elapse of: one year, or the employer's contesting
34 of the injured employee's claim for compensation and prescribed
35 medicine, or the board determination of the injured [~~employees~~] employ-
36 ee's claim, whichever is first; and

37 (d) the injured employee may be required to enter into an agreement
38 with the employer to ensure the continuation of payments of temporary
39 compensation and prescribed medicine.

40 3. An employer may cease making temporary payments of compensation and
41 prescribed medicine if such employer delivers within five days after the
42 last payment, to the injured employee and the board, a notice of termi-
43 nation of temporary payments of compensation on a form prescribed by the
44 board. Such notice shall inform the injured employee that the employer
45 is ceasing temporary payment of compensation and prescribed medicine.
46 Upon the cessation of temporary payments of compensation and prescribed
47 medicine, all parties to any action pursuant to this chapter shall
48 retain all rights, defenses and obligations they would otherwise have
49 pursuant to this chapter without regard for the temporary payment of
50 compensation and prescribed medicine.

51 § 31. Section 54-b of the workers' compensation law, as amended by
52 chapter 113 of the laws of 1946, is amended to read as follows:

53 § 54-b. Enforcement on failure to pay award or judgment. [~~In the event~~
54 ~~of the failure of a carrier or self-insurer to pay an award after the~~
55 ~~expiration of thirty days from the entry thereof, from which award or~~
56 ~~decision in connection therewith no appeal has been taken as provided by~~

1 ~~law, the chairman may enforce the payment of said award against the~~
2 ~~carrier or self-insurer by the entry of judgment in accordance with the~~
3 ~~provisions hereof and section twenty six. Where, however, the carrier~~
4 ~~or self-insurer has taken an appeal and the award or decision in~~
5 ~~connection therewith has been finally affirmed, as provided by law, and~~
6 ~~no rehearing has been ordered by the board herein, if such award and~~
7 ~~accrued costs and interest are not paid within thirty days after the~~
8 ~~entry of a final order by the court of last resort, the chairman may~~
9 ~~enforce, in like manner, payment against such carrier or self-insurer of~~
10 ~~all sums of money due thereon.] In case of default by a carrier or self-~~
11 ~~insured employer in the payment of any compensation due under an award~~
12 ~~for the period of thirty days after payment is due and payable, or in~~
13 ~~the case of failure by a carrier or self-insured employer to make full~~
14 ~~payment of an award for medical care issued by the board or the chair~~
15 ~~pursuant to section thirteen-g of this chapter, the chair in any such~~
16 ~~case or on the chair's consent any party to an award may file with the~~
17 ~~county clerk for the county in which the injury occurred or the county~~
18 ~~in which the carrier or self-insured employer has his or her principal~~
19 ~~place of business, (1) a certified copy of the decision of the board~~
20 ~~awarding compensation or ending, diminishing or increasing compensation~~
21 ~~previously awarded, from which no appeal has been taken within the time~~
22 ~~allowed therefor, or if an appeal has been taken by a carrier or self-~~
23 ~~insured employer who has not complied with the provisions of section~~
24 ~~fifty of this article, where he or she fails to deposit with the chair~~
25 ~~the amount of the award as security for its payment within ten days~~
26 ~~after the same is due and payable, or (2) a certified copy of the award~~
27 ~~for medical care issued pursuant to section thirteen-g of this chapter,~~
28 ~~and thereupon judgment must be entered in the supreme court by the clerk~~

29 of such county in conformity therewith immediately upon such filing. If
30 the payment in default be an installment, the board may declare the
31 entire award due and judgment may be entered in accordance with the
32 provisions of this section. Such judgment shall be entered in the same
33 manner, have the same effect and be subject to the same proceedings as
34 though rendered in a suit duly heard and determined by the supreme
35 court, except that no appeal may be taken therefrom. The court shall
36 vacate or modify such judgment to conform to any later award or decision
37 of the board upon presentation of a certified copy of such award or
38 decision. The award may be so compromised by the board as in the
39 discretion of the board may best serve the interest of the persons enti-
40 tled to receive the compensation or benefits. Where an award has been
41 made against a carrier or self-insured employer in accordance with the
42 provisions of subdivision nine of section fifteen, or of section twen-
43 ty-five-a of this chapter, such an award may be similarly compromised by
44 the board, upon notice to a representative of the fund to which the
45 award is payable, but if there be no representative of any such fund,
46 notice shall be given to such representative as may be designated by the
47 chair of the board; and notwithstanding any other provision of law, such
48 compromise shall be effective without the necessity of any approval by
49 the state comptroller. Neither the chair nor any party in interest shall
50 be required to pay any fee to any public officer for filing or recording
51 any paper or instrument or for issuing a transcript of any judgment
52 executed in pursuance of this section. The carrier or self-insured
53 employer shall be liable for all costs and attorneys fees necessary to
54 enforce the award. For the purposes of this section, the term "carrier"
55 shall include the state insurance fund and any stock corporation, mutual

1 corporation or reciprocal insurer authorized to transact the business of
2 workers' compensation insurance in this state.

3 § 32. Subdivision 1 of section 354 of the workers' compensation law,
4 as added by chapter 635 of the laws of 1996, is amended to read as
5 follows:

6 1. Each preferred provider organization shall provide at least [~~five~~]
7 two providers in every medical specialty from which the employee may
8 choose and at least [~~three~~] two hospitals from which the employee may
9 choose in the event that hospitalization is necessary. The [~~chair~~]
10 commissioner of health may waive such numerical requirements upon a
11 finding that the geographical area in which the preferred provider
12 organization is located cannot meet the requirements.

13 § 33. Section 134 of the workers' compensation law, as added by chap-
14 ter 635 of the laws of 1996, is amended to read as follows:

15 § 134. Workplace safety and loss prevention program; certification of
16 safety and loss management specialists. 1. The commissioner of labor,
17 in consultation with the superintendent of insurance[~~7~~] and the chair of
18 the [~~workers' compensation~~] board[~~, and the president of the compen-~~
19 ~~sation insurance rating board,~~] shall develop a compulsory workplace
20 safety and loss prevention program for all employers whose most recent
21 annual payroll is in excess of eight hundred thousand dollars and whose
22 most recent experience rating exceeds the level of 1.2. The commission-
23 er of labor[~~, shall request that the safety panel established by this~~
24 ~~section provide recommendations for the establishment, creation and~~
25 ~~implementation of the safety incentive program provided for in subdivi-~~
26 ~~sion six of this section and~~] shall promulgate rules and regulations for
27 the implementation of [~~this program~~] safety, drug and alcohol
28 prevention, and return to work incentive programs.

29 2. The [~~compensation insurance rating board or such other rating~~
30 ~~organization licensed by the state for the purpose of providing loss and~~
31 ~~rate information~~] commissioner of labor shall provide written notifica-
32 tion to employers whose most recent annual payroll is in excess of eight
33 hundred thousand dollars and whose most recent experience rating exceeds
34 the level of 1.2 that they are required to undergo a workplace safety
35 and loss prevention consultation and written evaluation. Copies of the
36 written notification shall be provided to the department of labor and
37 the employer's insurer. The employer must arrange for the consultation
38 and evaluation within thirty days after receiving the notification and
39 must within ten days thereafter notify its insurer and the department of
40 labor in writing of the means by which the evaluation is to be accom-
41 plished. The employer must provide its insurer and the department of
42 labor with a copy of the evaluation within thirty days after receiving
43 it from the safety and loss consultant. Any remedial action recommended
44 in the evaluation must be implemented by the employer within a reason-
45 able period of time, but not to exceed six months after the employer
46 receives the evaluation. The insurer, within sixty days after the expi-
47 ration of such six month period, shall conduct an inspection to ascer-
48 tain whether the recommended remedial action has been implemented, and
49 the insurer shall within forty-five days thereafter provide to the
50 employer and the department of labor a copy of its inspection report.

51 3. If the employer does not arrange for a consultation and evaluation
52 or fails to implement recommended remedial action within the times
53 prescribed, the insurer shall surcharge the employer's manual rate
54 premium by .05 for the next ensuing policy period, and so long as non-
55 compliance continues there shall be an additional .05 surcharge for each
56 year thereafter of non-compliance. An employer may challenge an insur-

1 er's determination that the employer has not taken the recommended reme-
2 dial action by appeal to the department of labor on notice to the insur-
3 er. The department of labor shall thereafter conduct an independent
4 inspection and its determination of compliance or non-compliance shall
5 be final. However, such appeal may not be entertained if the employer
6 has not paid its billed premium including any surcharge thereof.

7 4. Employers required to participate in the workplace safety and loss
8 prevention program established by this section shall be permitted to
9 utilize the services of either the department of labor, or a private
10 safety and loss consultant which has been certified by the department of
11 labor and has paid the appropriate certification fee prescribed by rules
12 and regulations promulgated under this section. Private safety and loss
13 consultants may charge employers a fee for their services, and where
14 employers elect to have the services provided by the department of
15 labor, they shall pay for such services in accordance with fee schedules
16 established by the department of labor's rules and regulations.

17 5. Fees charged by the department of labor to employers for workplace
18 safety and loss prevention consultations and evaluations and fees
19 charged to private safety and loss consultants for certification shall
20 be paid to the commissioner of taxation and finance and the comptroller
21 and deposited in the department of labor accounts designated for such
22 purposes. The fees deposited in those designated accounts shall be used
23 to cover administrative expenses of this program.

24 6. Safety, drug and alcohol prevention, and return to work incentive
25 [~~program~~] programs. Employers insured through the state insurance fund
26 (except those who are current policyholders in a recognized safety
27 group) or any other insurer that issues policies of workers' compen-
28 sation insurance, shall be eligible for a credit in workers' compen-

29 sation insurance premiums if they:

30 a. pay annual workers' compensation insurance premiums of at least
31 five thousand dollars; and

32 b. maintain an experience rating of under 1.30 for the year preceding
33 and the years in which the credit has been applied for provided that no
34 insured required to implement a safety program pursuant to subdivision
35 one of this section shall be eligible for a premium credit under this
36 subdivision; and

37 c. implement any of the following:

38 (1) a safety incentive plan, that has been recommended by a safety and
39 loss management specialist after such specialist has been certified by
40 the [~~safety panel established pursuant to this section. The credit,~~
41 ~~which shall be five percent of the workers' compensation insurance~~
42 ~~premium, shall be provided to the employer at the end of the policy~~
43 ~~year. The credit shall be available for two consecutive years, provided~~
44 ~~that the safety incentive plan shall have been implemented for a minimum~~
45 ~~of six months during the first year for which the credit is sought, and~~
46 ~~that such plan shall have been implemented for a full twelve months~~
47 ~~during the second year for which the credit is sought.] commissioner of
48 labor, or if such plan otherwise conforms to regulations promulgated by
49 the commissioner of labor;~~

50 (2) a drug and alcohol prevention program that conforms to regulations
51 issued by the commissioner of labor, in consultation with the office of
52 alcoholism and substance abuse services; and

53 (3) a return to work program that conforms to regulations issued by
54 the commissioner of labor.

1 The credit for each such program shall be established by regulations
2 issued by the superintendent of insurance. Such regulations shall
3 include provisions for recertification on an annual basis.

4 7. A self-insured employer shall be eligible for a reduction in the
5 security deposit provided for in subdivision three of section fifty of
6 this article if such employer has implemented any of the following: a. a
7 safety incentive plan that has been recommended by a safety and loss
8 management specialist after such specialist has been certified by the
9 [~~safety panel established pursuant to this section. The amount of the~~
10 ~~reduction in the required security deposit shall be no greater than five~~
11 ~~percent or such lesser amount as determined by the chair of the board to~~
12 ~~be necessary to assure that the deposit remains sufficient to secure the~~
13 ~~employer's liability to pay the compensation provided in this chapter.~~
14 ~~The reduction shall be provided to the employer at the end of the policy~~
15 ~~year. The reduction shall be available for two consecutive years,~~
16 ~~provided that the safety incentive plan shall have been implemented for~~
17 ~~a minimum of six months during the first year for which the reduction is~~
18 ~~sought, and that such plan shall have been implemented for a full twelve~~
19 ~~months during the second year for which the reduction is sought.]
20 commissioner of labor or if such plan otherwise conforms to regulations
21 promulgated by the commissioner of labor;~~

22 b. a drug and alcohol prevention program that conforms to regulations
23 issued by the commissioner of labor, in consultation with the office of
24 alcoholism and substance abuse services; and

25 c. a return to work program that conforms to regulations issued by the
26 commissioner of labor.

27 The credit for each program shall be no greater than established by
28 regulations issued by the superintendent of insurance or such lesser

29 amount as determined by the chair of the board to be necessary to assure
30 that the deposit remains sufficient to secure the employer's liability
31 to pay the compensation provided in this chapter. The chair, in consul-
32 tation with the superintendent of insurance, shall adopt regulations
33 which provide for recertification on an annual basis.

34 8. [~~There is hereby established a safety panel which shall have the~~
35 ~~responsibility to~~] The commissioner of labor shall: (i) receive and
36 review applications from applicants for certification as safety and loss
37 management specialists; and (ii) certify persons as safety and loss
38 management specialists; and (iii) revoke certification of safety and
39 loss management specialists for just cause.

40 [~~a. The safety panel shall consist of three voting members. One member~~
41 ~~shall be the president of the compensation insurance rating board. The~~
42 ~~two remaining members shall be appointed by the governor as follows: a~~
43 ~~representative of the business community appointed upon the recommenda-~~
44 ~~tion of the business council of New York state, incorporated; a repre-~~
45 ~~sentative of organized labor appointed upon the recommendation of the~~
46 ~~New York state American federation of labor congress of industrial~~
47 ~~organizations. Members appointed by the governor shall serve for terms~~
48 ~~of three years from the date of their appointment. Such members shall~~
49 ~~serve until their successors are appointed by the governor. The commis-~~
50 ~~sioner of labor, the chair of the board and the superintendent of insur-~~
51 ~~ance, or their designees, shall serve as ex officio non-voting members~~
52 ~~of the safety panel.~~

53 ~~b. The safety panel shall meet at least quarterly. The president of~~
54 ~~the compensation insurance rating board shall serve as chairperson.~~
55 ~~Members shall serve without compensation, except that they shall be~~

1 ~~allowed their actual and necessary expenses incurred in the performance~~
2 ~~of their duties pursuant to this section.]~~

3 9. The [~~board~~] commissioner of labor shall monitor all safety incen-
4 tive plans implemented by employers. As part of this responsibility, the
5 board shall insure that employee representatives are involved in the
6 development of such plans through meetings and discussions with the
7 respective certified safety and loss management specialist.

8 10. [~~After consultation with the safety panel established pursuant to~~
9 ~~this section, the~~] The commissioner of labor, in consultation with the
10 superintendent of insurance, shall promulgate rules and regulations for
11 the certification of safety and loss management specialists. Such rules
12 and regulations shall include provisions that outline the minimum quali-
13 fications for safety and loss management specialists, procedures for
14 certification, causes for revocation or suspension of certification and
15 appropriate administrative and judicial review procedures, violations
16 and penalties for misuse of certification by certified safety and loss
17 management specialists, and fees for certificate and certificate
18 renewal.

19 § 34. Section 23 of the workers' compensation law, as amended by chap-
20 ter 635 of the laws of 1996, is amended to read as follows:

21 § 23. Appeals. An award or decision of the board shall be final and
22 conclusive upon all questions within its jurisdiction, as against the
23 state fund or between the parties, unless reversed or modified on appeal
24 therefrom as hereinafter provided. Any party may within thirty days
25 after notice of the filing of an award or decision of a referee, file
26 with the board an application in writing for a modification or rescis-
27 sion or review of such award or decision, as provided in this chapter.
28 The board shall render its decision upon such application in writing and

29 shall include in such decision a statement of the facts which formed the
30 basis of its action on the issues raised before it on such application.
31 Within thirty days after notice of the decision of the board upon such
32 application has been served upon the parties, or within thirty days
33 after notice of an administrative redetermination review decision by the
34 chair pursuant to subdivision five of section fifty-two, section one
35 hundred thirty-one or section one hundred forty-one-a of this chapter
36 has been served upon any party in interest, an appeal may be taken ther-
37 efrom to the appellate division of the supreme court, third department,
38 by any party in interest, including an employer insured in the state
39 fund; provided, however, that if the decision or determination was that
40 of a panel of the board and there was a dissent from such decision or
41 determination other than a dissent the sole basis of which is to refer
42 the case to an impartial specialist, any party in interest may within
43 thirty days after notice of the filing of the board panel's decision
44 with the secretary of the board, make application in writing for review
45 thereof by the full board, and the full board shall review and affirm,
46 modify or rescind such decision or determination in the same manner as
47 herein above provided for an award or decision of a referee. Failure to
48 apply for [~~such~~] review by the full board shall not bar any party in
49 interest from taking an appeal directly to the court as above provided.
50 The board may also, in its discretion certify to such appellate division
51 of the supreme court, questions of law involved in its decision. Such
52 appeals and the question so certified shall be heard in a summary manner
53 and shall have precedence over all other civil cases in such court. The
54 board shall be deemed a party to every such appeal from its decision
55 upon such application, and the chair shall be deemed a party to every
56 such appeal from an administrative redetermination review decision

1 pursuant to subdivision five of section fifty-two of this chapter. The
2 attorney general shall represent the board and the chair thereon. An
3 appeal may also be taken to the court of appeals in the same manner and
4 subject to the same limitations not inconsistent herewith as is now
5 provided in the civil practice law and rules. It shall not be necessary
6 to file exceptions to the rulings of the board. An appeal to the appel-
7 late division of the supreme court, third department, or to the court of
8 appeals, shall not operate as a stay of the payment of compensation
9 required by the terms of the award or of the payment of the [~~doctors'~~
10 ~~bills~~] cost of such medical, dental, surgical, optometric or other
11 attendance, treatment, devices, apparatus or other necessary items the
12 employer is required to provide pursuant to section thirteen of this
13 article which are found to be fair and reasonable. Where such award is
14 modified or rescinded upon appeal, the appellant shall be entitled to
15 reimbursement in a sum equal to the compensation in dispute paid to the
16 respondent in addition to a sum equal to the [~~amount of the doctors'~~
17 ~~bills~~] cost of such medical, dental, surgical, optometric or other
18 attendance, treatment, devices, apparatus or other necessary items the
19 employer is required to provide pursuant to section thirteen of this
20 article paid by the appellant pending adjudication of the appeal. Such
21 reimbursement shall be paid from administration expenses as provided in
22 section one hundred fifty-one of this chapter upon audit and warrant of
23 the comptroller upon vouchers approved by the chair. Where such award is
24 subject to the provisions of section twenty-seven of this article, the
25 appellant shall pay directly to the claimant all compensation as it
26 becomes due during the pendency of the appeal, and upon affirmance shall
27 be entitled to credit for such payments. Neither the chair, the board,
28 the commissioners of the state insurance fund nor the claimant shall be

29 required to file a bond upon an appeal to the court of appeals. Upon
30 final determination of such an appeal, the board or chair, as the case
31 may be, shall enter an order in accordance therewith. Whenever a notice
32 of appeal is served or an application made to the board by the employer
33 or insurance carrier for a modification or rescission or review of an
34 award or decision, and the board shall find that such notice of appeal
35 was served or such application was made for the purpose of delay or upon
36 frivolous grounds, the board shall impose a penalty in the amount of
37 [~~two hundred fifty~~] five hundred dollars upon the employer or insurance
38 carrier, which penalty shall be added to the compensation and paid to
39 the claimant. The penalties provided herein shall be collected in like
40 manner as compensation. A party against whom an award of compensation
41 shall be made may appeal from a part of such award. In such a case the
42 payment of such part of the award as is not appealed from shall not
43 prejudice any rights of such party on appeal, nor be taken as an admis-
44 sion against such party. Any appeal by an employer from an administra-
45 tive redetermination review decision pursuant to subdivision five of
46 section fifty-two of this chapter shall in no way serve to relieve the
47 employer from the obligation to timely pay compensation and benefits
48 otherwise payable in accordance with the provisions of this chapter.

49 Nothing herein contained shall be construed to inhibit the continuing
50 jurisdiction of the board as provided in section one hundred twenty-
51 three of this chapter.

52 § 35. Paragraph (b) of subdivision 2 of section 26-a of the workers'
53 compensation law, as amended by chapter 316 of the laws of 1991, is
54 amended to read as follows:

55 (b) For the purpose of establishing and maintaining this fund, the
56 board, upon rendering a decision with respect to any claim for compen-

1 sation under this chapter that the employer liable therefor has failed
2 to secure the payment of compensation with respect thereto in accordance
3 with section fifty of this chapter, shall impose an assessment in the
4 sum of [~~two hundred fifty dollars~~] one thousand dollars for each ten day
5 period of non-compliance or a sum not in excess of two times the amount
6 of the cost of compensation for its payroll for the period of such fail-
7 ure against the employer and direct its payment into the fund in
8 connection with each such claim wherein injury shall have occurred on or
9 after the first of May, nineteen hundred fifty-nine, or in death cases
10 where death as the result of injury shall have occurred on or after said
11 date. [~~The board shall also impose an additional assessment of fifteen~~
12 ~~per centum of the award or awards made in each such claim, such addi-~~
13 ~~tional assessment shall not be less than one thousand five hundred~~
14 ~~dollars and shall not exceed five thousand dollars in any one claim, and~~
15 ~~shall direct that such additional assessment also be paid into the~~
16 ~~fund.~~]

17 § 36. Section 13-n of the workers' compensation law is amended by
18 adding a new subdivision 3 to read as follows:

19 3. The chair, upon finding that an entity that derives income from
20 independent medical examinations has materially altered an independent
21 medical examination report, or caused such a report to be materially
22 altered, may revoke the registration of such entity, impose a penalty
23 not exceeding ten thousand dollars and refer the matter to the attorney
24 general for prosecution.

25 § 37. Section 10 of the workers' compensation law is amended by adding
26 a new subdivision 4 to read as follows:

27 4. Any person incarcerated upon conviction of a felony shall be deemed
28 ineligible for all benefits provided under this chapter. All those whose

29 benefits have ceased by operation of this section, may apply to the
30 board for benefits upon their release from custody pursuant to regu-
31 lation of the board.

32 § 38. Paragraphs (a) and (b) of subdivision 2 of section 13-d of the
33 workers' compensation law, as amended by chapter 473 of the laws of
34 2000, are amended to read as follows:

35 (a) has been guilty of professional or other misconduct or incompeten-
36 cy in connection with rendering medical services [~~rendered~~] under [~~this~~
37 ~~chapter~~] the law; or

38 (b) has exceeded the limits of his or her professional competence in
39 rendering medical care or in conducting independent medical examinations
40 under [~~this chapter~~] the law, or has made materially false statements
41 regarding his or her qualifications in his or her application for the
42 recommendation of the medical society or board as provided in section
43 thirteen-b of this article; or

44 § 39. Section 13-d of the workers' compensation law is amended by
45 adding a new subdivision 5 to read as follows:

46 5. Whenever the department of health shall conduct an investigation
47 with respect to charges of professional or other misconduct by a physi-
48 cian which results in a report, determination or consent order that
49 includes a finding of professional or other misconduct or incompetency
50 by such physician, the chair shall have full power and authority to
51 temporarily suspend, revoke or otherwise limit the authorization under
52 this chapter of any physician upon such finding by the department of
53 health that the physician has been guilty of professional or other
54 misconduct. The recommendations of the department of health shall be
55 advisory to the chair only and shall not be binding or conclusive upon
56 the chair.

1 § 40. Paragraph (a) of subdivision 2-a of section 25 of the workers'
2 compensation law, as amended by chapter 635 of the laws of 1996, is
3 amended to read as follows:

4 (a) In any controverted case, upon receipt of the notice of controver-
5 sy, the board shall schedule a pre-hearing conference before a referee
6 or conciliator as soon as practicable but not to exceed [~~sixty~~] forty-
7 five days after receipt of notice of controversy and a medical report
8 referencing an injury. The board shall give notice of the pre-hearing
9 conference to all parties. A party may appear at such conference pro se,
10 or by an attorney or licensed representative or other representative
11 authorized by the board to appear on behalf of such party.

12 § 41. Paragraph (d) of subdivision 3 of section 25 of the workers'
13 compensation law, as amended by chapter 635 of the laws of 1996, is
14 amended to read as follows:

15 (d) If, in any case, the issues have not been resolved within [~~two~~
16 ~~years~~] one year after such issues have been raised before the board, or
17 if multiple claims arise from the same accident or occurrence, or if all
18 parties agree to an expedited hearing, or if a notice of controversy is
19 filed, or if the chair otherwise deems it necessary, the chair may order
20 that the case be transferred to a special part for expedited hearings.
21 Proceedings in such 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. An adjourned case shall be rescheduled as soon as prac-
25 ticable, but no later than thirty days following such adjournment.

26 If a request for an adjournment is made by a carrier or employer which
27 is not an emergency and is deemed to be frivolous by the chair, a penal-
28 ty of one thousand dollars shall be imposed by the chair. If such

29 employer or carrier is represented by an attorney or licensed represen-
30 tative who is not an employee of the carrier or employer, the attorney
31 or licensed representative shall be responsible for the payment of such
32 penalty. If a request for an adjournment is made by a claimant who is
33 represented by an attorney or a licensed representative which is not an
34 emergency and is deemed to be frivolous by the chair, a penalty of five
35 hundred dollars shall be imposed by the chair on the attorney or
36 licensed representative. Such penalty shall be paid by the attorney or
37 licensed representative and shall not come out of the claimant's award.
38 No penalty shall be imposed on an unrepresented claimant who requests an
39 adjournment.

40 § 42. Subdivisions 1 and 2 of section 54 of the workers' compensation
41 law, subdivision 1 as amended by chapter 605 of the laws of 1946, are
42 amended to read as follows:

43 1. Right of recourse to the insurance carrier. Every policy of insur-
44 ance covering the liability of the employer for compensation **shall be**
45 issued by [~~a~~] **one or more** stock [~~company~~] **companies**, [~~by—a~~] mutual
46 [~~corporation~~] **corporations** or [~~by—a~~] reciprocal [~~insurer~~] **insurers**
47 authorized to transact [~~workmen's~~] **workers'** compensation insurance in
48 this state. **In the case of a policy with multiple insurers, such insur-**
49 **ers shall share one hundred percent of the liabilities by subscription,**
50 **and one of the insurers shall serve as the lead insurer for notice and**
51 **cancellation purposes. Such a policy** shall contain a provision setting
52 forth the right of the [~~chairman~~] **chair** to enforce in the name of the
53 people of the state of New York for the benefit of the person entitled
54 to the compensation insured by the policy either by filing a separate
55 application or by making the insurance carrier a party to the original
56 application, the liability of the insurance carrier in whole or in part

1 for the payment of such compensation; provided, however, that payment in
2 whole or in part of such compensation by either the employer or the
3 insurance carrier shall to the extent thereof be a bar to the recovery
4 against the other of the amount so paid.

5 2. Knowledge and jurisdiction of the employer extended to cover the
6 insurance carrier. Every such policy shall contain a provision that, as
7 between the employee and the insurance carrier, the notice to or know-
8 ledge of the occurrence of the injury on the part of the employer shall
9 be deemed notice or knowledge, as the case may be, on the part of the
10 insurance carrier, or if more than one insurer, the lead carrier; that
11 jurisdiction of the employer shall, for the purpose of this chapter, be
12 jurisdiction of the lead insurance carrier and that [~~the~~] such insurance
13 carrier shall in all things be bound by and subject to the orders, find-
14 ings, decisions or awards rendered against the employer for the payment
15 of compensation under the provisions of this chapter.

16 § 43. Section 77 of the workers' compensation law, as amended by chap-
17 ter 635 of the laws of 1996, is amended to read as follows:

18 § 77. Administration. The state insurance fund shall be administered
19 by the commissioners of the state insurance fund, of whom there shall be
20 [~~eight~~] ten. The commissioner of labor shall, in addition, be a commis-
21 sioner of such fund by virtue of his or her office. The commissioners
22 shall elect annually from the appointive members a chair and a vice-
23 chair who shall act as chair in the absence of the chair. The commis-
24 sioner of labor may designate a deputy commissioner to act in his or her
25 place and stead as a commissioner of such fund. The commissioners shall
26 be appointed by the governor, by and with the advice and consent of the
27 senate. One commissioner shall be appointed by the governor upon recom-
28 mendation by the New York State American Federation of Labor-Congress of

29 Industrial Organizations, and one commissioner shall be appointed by the
30 governor upon recommendation of the Business Council of the State of New
31 York. They shall be policyholders insured in the state insurance fund.
32 The commissioners shall be appointed for terms of three years each.
33 They shall serve until their successors are appointed and have quali-
34 fied. Vacancies shall be filled for the unexpired terms. Each commis-
35 sioner shall before entering upon his or her duties, take and subscribe
36 the constitutional oath of office which shall be filed in the office of
37 the secretary of state.

38 § 44. Subdivision 1 of section 87 of the workers' compensation law, as
39 amended by chapter 473 of the laws of 2000, is amended to read as
40 follows:

41 1. Any of the surplus or reserve funds belonging to the state insur-
42 ance fund, by order of the commissioners, approved by the superintendent
43 of insurance, may be invested in the types of securities described in
44 subdivisions one, two, three, four, five, six, eleven, twelve, twelve-a,
45 thirteen, fourteen, fifteen, nineteen, twenty, twenty-one, twenty-one-a,
46 twenty-four, twenty-four-a, twenty-four-b, twenty-four-c and twenty-five
47 of section two hundred thirty-five of the banking law or, up to fifty
48 percent of such surplus or reserve funds, in the types of securities or
49 investments described in paragraphs two, three, eight and ten of
50 subsection (a) of section one thousand four hundred four of the insur-
51 ance law except that up to ten percent of the surplus and reserve funds
52 belonging to the state insurance fund that may be invested in the secu-
53 rities of any solvent American institution or of an investment company
54 as described in such paragraphs may be invested irrespective of the
55 rating of such institution's obligations or other similar qualitative
56 standards described in paragraphs two, three, eight and ten of such

1 subsection, but shall not include any derivative instrument or deriva-
2 tive transaction or any investment found by the superintendent of insur-
3 ance to be against public policy. Any of the surplus or reserve funds
4 belonging to the state insurance fund, upon like approval of the super-
5 intendent of insurance, may be loaned on the pledge of any such securi-
6 ties. The commissioners, upon like approval of the superintendent of
7 insurance, may also sell any of such securities or investments.

8 § 45. Section 351 of the workers' compensation law, as added by chap-
9 ter 635 of the laws of 1996, is amended to read as follows:

10 § 351. Preferred provider organizations; contracts. [~~Any~~] The state
11 insurance fund, any stock corporation, mutual corporation or reciprocal
12 insurer authorized to transact the business of workers' compensation
13 insurance in this state or self-insurer may contract with a preferred
14 provider organization to deliver all medical services mandated by this
15 chapter, provided such contract takes effect on or after January first,
16 nineteen hundred ninety-seven and the insurer or the employer has no
17 financial interest in the preferred provider organization. Where there
18 is a duty to collectively bargain, an employer shall collectively
19 bargain the use and implementation of a preferred provider organization
20 with the authorized collective bargaining agent of its employees.

21 § 46. Subdivision 2 of section 27 of the workers' compensation law,
22 as amended by chapter 68 of the laws of 1976, is amended to read as
23 follows:

24 2. If an award under this chapter requires payment of death benefits
25 or other compensation by an insurance carrier or employer in periodical
26 payments, the board may, in its discretion, at any time, any provision
27 of this chapter to the contrary notwithstanding, compute and permit or
28 require to be paid into the aggregate trust fund an amount equal to the

29 present value of all unpaid death benefits or other compensation in
30 cases in which awards are made for total permanent or permanent partial
31 disability for a period of one hundred and four weeks or more, for which
32 liability exists, together with such additional sum as the board may
33 deem necessary for a proportionate payment of expenses of administering
34 the fund so created, including the cost of the actuarial computation by
35 or on behalf of the board of the present value of the award, and for the
36 purposes of this section such cases shall be known as discretionary type
37 cases. If any such award made on or after July first, nineteen hundred
38 thirty-five, requires payment for total permanent disability resulting
39 from the loss of both hands, or both arms, or both feet, or both legs,
40 or both eyes, or of any two thereof, or for permanent partial disability
41 resulting from loss of an arm, leg, hand, foot or eye, or of death bene-
42 fits by an insurance carrier which is a stock corporation or mutual
43 association, or if any such award made on or after July first, two thou-
44 sand seven requires payment for permanent partial disability under para-
45 graph w of subdivision three of section fifteen of this article by an
46 insurance carrier which is a stock corporation or mutual association,
47 which for the purposes of this section shall be known as mandatory type
48 cases, the board shall immediately compute the present value thereof and
49 require payment of such amount into the aggregate trust fund, together
50 with such additional sum as the board may deem necessary for a propor-
51 tionate payment of expenses of administering such trust fund including
52 the cost of the actuarial computation by or on behalf of the board of
53 the present value of the award provided, however, that where an employer
54 or his insurance carrier is found to be entitled to reimbursement from
55 the special disability fund of subdivision eight of section fifteen, the
56 computation of the present value of the award and the requirement for

1 payment of such amount into the said trust fund shall not be mandatory
2 and such cases shall be deemed to be discretionary type cases; further
3 provided that where an employee entitled to compensation under this
4 chapter be injured or killed by the negligence or wrong of another not
5 in the same employ, the computation of the present value and the
6 requirement for payment of such amount into the said trust fund shall be
7 held in abeyance until (1) six months have elapsed from the award of
8 compensation, or in any event not more than one year after the date of
9 the accident, if the injured employee, or in case of death, his personal
10 representatives, spouse, parents, dependents or next of kin, or anyone
11 otherwise entitled to recover damages at common law or otherwise, on
12 account of such injury or death, have failed to commence such action,
13 (2) the termination of any such action brought by the injured employee,
14 or in case of death, his personal representatives, spouse, parents,
15 dependents or next of kin, or anyone otherwise entitled to recover
16 damages, at common law or otherwise, on account of such injury or death,
17 under the provisions of section twenty-nine of this [~~chapter~~] article.

18 § 47. Subsection (a) of section 107 of the insurance law is amended by
19 adding a new paragraph 54 to read as follows:

20 (54) The "workers' compensation rating board" or the "New York work-
21 ers' compensation rating board" shall mean the compensation insurance
22 rating board until February first, two thousand eight, and thereafter
23 such entity as is designated by law.

24 § 48. Section 3 of the volunteer ambulance workers' benefit law is
25 amended by adding a new subdivision 15 to read as follows:

26 15. The "workers' compensation rating board" or the "New York work-
27 ers' compensation rating board" shall mean the compensation insurance
28 rating board until February first, two thousand eight, and thereafter

29 such entity as is designated by law.

30 § 49. Section 3 of the volunteer firefighters' benefit law is amended
31 by adding a new subdivision 17 to read as follows:

32 17. The "workers' compensation rating board" or the "New York work-
33 ers' compensation rating board" shall mean the compensation insurance
34 rating board until February first, two thousand eight, and thereafter
35 such entity as is designated by law.

36 § 50. Subdivision 3 of section 25-a of the workers' compensation law,
37 as amended by chapter 331 of the laws of 1978, the third undesignated
38 paragraph as amended by chapter 729 of the laws of 1993 and the closing
39 paragraph as added by chapter 540 of the laws of 1984, is amended to
40 read as follows:

41 3. Any awards so made shall be payable out of the special fund hereto-
42 fore created for such purpose, which fund is hereby continued and shall
43 be known as the fund for reopened cases. The employer, or, if insured,
44 his insurance carrier shall pay into such fund, or, in the case of
45 awards made on or after July first, nineteen hundred sixty-nine, either
46 into such fund or the uninsured employers' fund under section twenty-
47 six-a of this [~~chapter~~] article in accordance with the provisions there-
48 of, for every case of injury causing death for which there are no
49 persons entitled to compensation the sum of three hundred dollars where
50 such injury occurred prior to July first, nineteen hundred forty and the
51 sum of one thousand dollars where such injury shall occur on or after
52 said date and prior to April first, nineteen hundred forty-five, and the
53 sum of fifteen hundred dollars where such injury shall occur on or after
54 April first, nineteen hundred forty-five and prior to September first,
55 nineteen hundred seventy-eight and the sum of three thousand dollars
56 where such injury shall occur on or after September first, nineteen

1 hundred seventy-eight, and in each case of death resulting from injury
2 sustained on or after July first, nineteen hundred forty and prior to
3 September first, nineteen hundred seventy-eight, where there are persons
4 entitled to compensation but the total amount of such compensation is
5 less than two thousand dollars exclusive of funeral benefits, the
6 employer, or, if insured, his insurance carrier, shall pay into such
7 fund, or, in the case of awards made on or after July first, nineteen
8 hundred sixty-nine and prior to September first, nineteen hundred seven-
9 ty-eight, either into such fund or the uninsured employers' fund under
10 section twenty-six-a of this [~~chapter~~] article in accordance with the
11 provisions thereof, the difference between the sum of two thousand
12 dollars and the compensation, exclusive of funeral benefits, and in each
13 case of death resulting from injury sustained on or after September
14 first, nineteen hundred seventy-eight, the employer, or if insured, his
15 insurance carrier shall pay into such fund or the uninsured employers'
16 fund under section twenty-six-a of this [~~chapter~~] article in accordance
17 with the provisions thereof, the difference between the sum of five
18 thousand dollars and the compensation, exclusive of funeral benefits
19 actually paid to or for the dependents of the deceased employee together
20 with any expense charge required by section twenty-seven of this [~~chap-~~
21 ~~ter~~] article; provided, however, that where death shall occur subsequent
22 to the periods limited by subdivision one of this section no payment
23 into such special fund nor to the special fund provided by subdivision
24 nine of section fifteen nor to the uninsured employers' fund provided by
25 section twenty-six-a of this [~~chapter~~] article shall be required. In
26 addition to the assessments made against all insurance carriers for the
27 expenses of administering [~~the workmen's compensation law~~] this chapter
28 provided for under the provisions of section one hundred [~~and~~] fifty-one

29 of this chapter, and the payments above provided, the employer, or, if
30 insured, his insurance carrier, shall pay the sum of five dollars into
31 said fund for each case in which an award is made pursuant to the
32 provisions of paragraphs a to s inclusive of subdivision three of
33 section fifteen of this chapter, by reason of injury sustained between
34 July first, nineteen hundred forty and June thirtieth, nineteen hundred
35 forty-two, both dates inclusive, and the sum of ten dollars for each
36 such case by reason of injury sustained between July first, nineteen
37 hundred forty-two and June thirtieth, nineteen hundred fifty, both dates
38 inclusive, which payment shall be in addition to any payment of compen-
39 sation to the injured employee as provided in this chapter.

40 There shall be maintained in the special fund at all times assets at
41 least equal in value to the sum of (1) the value of awards charged
42 against such fund, (2) the value of all claims that have been reopened
43 by the board as a charge against such fund but as to which awards have
44 not yet been made, (3) effective January first, nineteen hundred seven-
45 ty-one, the total supplemental benefits paid from such fund as
46 reimbursement pursuant to subdivision nine of this section during the
47 calendar year immediately preceding, and (4) a reserve equal to ten per
48 cent of the sum of items (1) and (2) of this paragraph. For the purpose
49 of accumulating funds for the payment of supplemental benefits pursuant
50 to subdivision nine of this section, the chairman shall impose against
51 all carriers an assessment in the sum of five million dollars to be
52 collected in the respective proportions established in the fiscal year
53 commencing April first, nineteen hundred sixty-eight, under the
54 provisions of section one hundred fifty-one of this chapter for each
55 carrier. Annually, as soon as practicable after January first in each
56 year, the chairman shall ascertain the condition of the fund and whenev-

1 er the assets shall fall below the prescribed minimum as herein provided
2 the chairman shall assess and collect from all insurance carriers, in
3 the respective proportions established in the prior fiscal year under
4 the provisions of section one hundred fifty-one of this chapter for each
5 carrier, an amount sufficient to restore the fund to the prescribed
6 minimum. The chairman before making an assessment as [~~herein~~]
7 in this section shall give thirty days' notice to the representative of
8 the fund, designated pursuant to subdivision five of this section, that
9 an itemized statement of the condition of the fund is open for his
10 inspection. The superintendent of insurance may examine into the condi-
11 tion of the fund at any time on his own initiative or on request of the
12 chairman or representative of the fund.

13 Such assessment and the payments made into said fund shall not consti-
14 tute an element of loss for the purpose of establishing rates for work-
15 ers' compensation insurance as provided in the insurance law but shall
16 for the purpose of recoupment be treated as separate costs by carriers.
17 Carriers shall assess such costs on their policyholders in accordance
18 with rules set forth by the New York workers' compensation [~~insurance~~]
19 rating board, as approved by the superintendent of insurance.

20 The provisions of this subdivision shall not apply with respect to
21 policies containing coverage pursuant to [~~subdivision four-a of~~] section
22 [~~one hundred sixty-seven~~] thirty-four hundred twenty of the insurance
23 law relating to every policy providing comprehensive personal liability
24 insurance on a one, two, three or four family owner-occupied dwelling.

25 § 51. Paragraph (f) of subdivision 3-e of section 50 of the workers'
26 compensation law, as added by chapter 729 of the laws of 1993, is
27 amended to read as follows:

28 (f) The New York workers' compensation [~~insurance~~] rating board shall

29 file for appropriate premium discounts subject to the approval of the
30 superintendent of insurance.

31 § 52. Section 88 of the workers' compensation law, as amended by chap-
32 ter 309 of the laws of 1996, is amended to read as follows:

33 § 88. Administration expenses. The entire expense of administering
34 the state insurance fund shall be paid out of such fund. The portion of
35 such expenses applicable and chargeable to the disability benefits fund
36 and the medical and hospital malpractice fund shall be determined on an
37 equitable basis with due allowance for the division of overhead
38 expenses. Not later than the first day of November there shall be
39 submitted to the director of the budget for his approval an estimated
40 budget of expenditures for the succeeding calendar year having due
41 regard to the business interests and contract obligations of the fund.
42 There may not be expended for the state insurance fund for purposes of
43 administration more than the amounts specified in such budget for each
44 item of expenditure, except as authorized by the director of the budget.
45 In no case shall the amount of expenditures so authorized for an entire
46 year for [~~workmen's~~ workers' compensation insurance exceed twenty-five
47 per centum of the earned premiums for such insurance for that year. In
48 no case shall the amount of expenditures authorized for the disability
49 benefits fund for an entire year exceed twenty-five per centum of the
50 premiums earned by that fund. In no case shall the amount of expendi-
51 tures authorized for the medical and hospital malpractice fund for an
52 entire year exceed twenty-five per centum of the premiums earned by that
53 fund. If there be officers or employees of the department whose duties
54 relate partly to the general work of the department and partly to the
55 work of the state insurance fund, and in case there is other expense
56 which is incurred jointly on behalf of the general work of the depart-

1 ment and the state insurance fund, an equitable apportionment of the
2 expense shall be made and the part thereof which is applicable to the
3 state insurance fund shall be chargeable thereto. The expenses of the
4 department of audit and control incurred in connection with the pre-au-
5 dit of expenditures of the state insurance fund, as required by section
6 one hundred eleven of the state finance law, shall be a charge against
7 and be paid out of the moneys of the state insurance fund and there
8 shall be included in the annual estimate submitted pursuant to this
9 section an amount sufficient to pay such expenses for the period covered
10 by such estimate. Notwithstanding section four of the state finance law,
11 the state comptroller is authorized to process or approve payments
12 related to business taxes, various workers' compensation board assess-
13 ments and assessments related to the workers' compensation [~~insurance~~]
14 rating board directly from the fund's accounts without explicit appro-
15 priation authority. The commissioner of labor shall include in his
16 annual report to the legislature a statement of the commissioners show-
17 ing the expense of administering the state fund for the preceding year.
18 All appointments to positions in the state insurance fund shall be made
19 subject to civil service requirements.

20 § 53. Subdivision 3 of section 89 of the workers' compensation law, as
21 added by chapter 135 of the laws of 1998, is amended to read as follows:

22 3. The base rates applicable to construction classifications as
23 defined in this subdivision shall be adjusted by the New York workers'
24 compensation [~~insurance~~] rating board beginning October first, nineteen
25 hundred ninety-nine, to reflect the payroll limitations required by this
26 subdivision as they separately affect such rates for work actually
27 performed within each of the following geographic territories:

28 (a) Territory 1 comprising the counties of the Bronx, Kings, New York,

29 Queens, and Richmond;

30 (b) Territory 2 comprising the counties of Dutchess, Nassau, Orange,
31 Putnam, Rockland, Suffolk and Westchester; and

32 (c) Territory 3 comprising all other counties within the state.

33 § 54. Intentionally omitted.

34 § 55. Subdivisions 1 and 2 of section 135 of the workers' compensation
35 law, as added by chapter 635 of the laws of 1996, are amended to read as
36 follows:

37 1. An employer insured by a licensed insurer or the state insurance
38 fund for workers' compensation insurance may apply for a credit against
39 the premiums for such coverage provided such employer is not currently
40 receiving any statutory safety incentive or sanction authorized under
41 this chapter for amounts invested by such employer in the creation of a
42 safer work environment which meets the requirements of this section.
43 The credit may be applied for a renewable period not to exceed three
44 years. For any one year, the credit shall equal, if actuarially appro-
45 priate, an amount up to five percent of the total amount invested as
46 calculated under the provisions of this section but shall not exceed
47 fifteen percent of such employer's annual earned premium for that year
48 in accordance with workers' compensation [~~insurance~~] rating board manual
49 rates. An employer applying for such credit must provide evidence
50 required by rules or regulations promulgated by the superintendent of
51 insurance that the investment would result in a safer work environment,
52 with such evidence to include a written opinion by a certified safety
53 professional, a certified industrial hygienist or a licensed profes-
54 sional engineer describing the items included in the investment and an
55 analysis of how they will substantially enhance the safety of the work
56 environment.

1 2. It shall be the sole responsibility of the superintendent of insur-
2 ance, with the assistance of a committee, to determine whether an
3 employer who has made an application is eligible for a premium credit
4 and the extent of any such credit, and to otherwise assist in the admin-
5 istration of the premium credit program, including the promulgation of
6 insurance department rules and regulations for the implementation of the
7 program.

8 In addition to the superintendent of insurance, the committee shall
9 consist of:

10 (a) a representative from the department of labor;

11 (b) a representative from the department of economic development;

12 (c) a representative from the state insurance fund;

13 (d) an individual with an actuarial background and experience in the
14 field of workers' compensation;

15 (e) an individual with a background in safety engineering appointed by
16 the governor upon recommendation by the New York State American Feder-
17 ation of Labor-Congress of Industrial Organizations;

18 (f) an individual with a background in safety engineering appointed by
19 the governor upon recommendation of the Business Council of the State of
20 New York;

21 (g) an individual with a background in safety engineering appointed by
22 the governor upon recommendation of the insurance industry; and

23 (h) an additional member of the committee with respect to any given
24 application for a premium credit shall be the current insurer of the
25 applicant.

26 All departments, divisions, boards, offices, and public corporations
27 of the state, and the workers' compensation [~~insurance~~] rating board,
28 shall provide such data, information or other assistance as the commit-

29 tee may require to fulfill its purposes.

30 The committee shall serve at the pleasure of the governor and shall
31 receive no compensation except for reasonable and necessary expenses
32 incurred in the course of performing the official duties of the commit-
33 tee. Such expenses shall be paid from application fees paid in accord-
34 ance with rules and regulations promulgated by the superintendent of
35 insurance.

36 § 56. Paragraphs (b) and (c) of subdivision 2 of section 151 of the
37 workers' compensation law, as amended by chapter 510 of the laws of
38 2000, are amended to read as follows:

39 (b) An itemized statement of the expenses so ascertained shall be open
40 to public inspection in the office of the board for thirty days after
41 notice to the state insurance fund, all insurance carriers and all self-
42 insurers including group self-insurers affected thereby, before the
43 board shall make an assessment for such expenses. The chair shall assess
44 upon and collect a proportion of such expenses as hereinafter provided
45 from each insurance carrier, the state insurance fund and each self-in-
46 surer including group self-insurers. The assessment for such expenses
47 shall be allocated to (i) self-insurers except group self-insurers and
48 the state insurance fund based upon the proportion that the total
49 compensation payments made by all self-insurers except group self-insur-
50 ers and the state insurance fund in such year bore to the total compen-
51 sation payments made by all self-insurers except group self-insurers,
52 the state insurance fund [~~and~~], all insurance carriers and group self-
53 insurers and (ii) insurance carriers based upon the proportion that the
54 total compensation payments made by all insurance carriers in such year
55 bore to the total compensation payments by all self-insurers, the state
56 insurance fund and all insurance carriers during the fiscal year which

1 ended within said preceding calendar year, and (iii) group self-insurers
2 based upon the proportion that the total compensation payments made by
3 all group self-insurers bore to the total compensation payments made by
4 all self-insurers, the state insurance fund and all insurance carriers
5 during the fiscal year which ended within said preceding calendar year.

6 The portion of the assessment for such expenses allocated to self-insur-
7 ers except group self-insurers and the state insurance fund that shall
8 be collected from each self-insurer except group self-insurers and the
9 state insurance fund shall be a sum equal to the proportion of the
10 amount which the total compensation payments of each such self-insurer
11 except a group self-insurer or the state insurance fund in such year
12 bore to the total compensation payments made by all self-insurers except
13 group self-insurers and the state insurance fund. The portion of the
14 assessment for such expenses allocated to insurance carriers that shall
15 be collected from each such insurance carrier shall be a sum equal to
16 that proportion of the amount which the total premiums written by each
17 such insurance carrier in such year bore to the total written premiums
18 reported by all insurance carriers. The portion of such sum allocated
19 to group self-insurers that shall be collected from each group self-in-
20 surer shall be a sum equal to that proportion of the amount which the
21 pure premium calculation for each such group self-insurer bore to the
22 total pure premium calculation for all group self-insurers for the
23 calendar year which ended within the preceding state fiscal year. The
24 amounts so secured shall be used for the payment of the expenses of
25 administering this chapter.

26 For purposes of this paragraph, "direct premiums written" means gross
27 premiums, including policy and membership fees, less return premiums and
28 premiums on policies not taken. For purposes of this paragraph "pure

29 premium calculation" means the New York state annual payroll as of
30 December thirty-first of the preceding year by class code for each
31 employer member of a group self-insurer multiplied by the applicable
32 rate for each class code as determined by the workers' compensation
33 rating board in effect on December thirty-first of the preceding year.

34 The amounts so secured shall be used for the payment of the expenses of
35 administering this chapter.

36 For the purposes of this paragraph, the term "insurance carrier" shall
37 include only stock corporations, mutual corporations and reciprocal
38 insurers authorized to transact the business of workers' compensation
39 insurance in this state and the term "self-insurer" shall include any
40 employer or group of employers permitted to pay compensation directly
41 under the provisions of subdivision three, three-a or four of section
42 fifty of this chapter.

43 (c) Assessments for the special disability fund, the fund for reopened
44 cases and for the operations of the board shall not constitute elements
45 of loss but shall for collection purposes be treated as separate costs
46 by carriers. All group self-insurers shall collect such assessments
47 from their employer members in a fair and equitable manner. All insur-
48 ance carriers, including the state insurance fund, shall collect such
49 assessments from their policyholders through a surcharge based on premi-
50 um in accordance with rules set forth by the New York workers' compen-
51 sation [~~insurance~~] rating board, as approved by the superintendent of
52 insurance. Such surcharge shall be considered as part of premium for
53 purposes prescribed by law including, but not limited to, computing
54 premium tax, reporting to the superintendent of insurance pursuant to
55 section ninety-nine of this chapter and section three hundred seven of
56 the insurance law, determining the limitation of expenditures for the

1 administration of the state insurance fund pursuant to section eighty-
2 eight of this chapter and the cancellation by an insurance carrier,
3 including the state insurance fund, of a policy for non-payment of
4 premium.

5 § 57. Section 308 of the insurance law is amended by adding a new
6 subsection (g) to read as follows:

7 (g) The superintendent shall report to the governor, the speaker of
8 the assembly, and the majority leader of the senate on or before Septem-
9 ber first, two thousand seven on the compensation insurance rating board
10 on matters related to the compensation insurance rating board. Such
11 report shall address, among such matters the superintendent may deem
12 relevant to the compensation insurance rating board including: (1) the
13 manner in which the compensation insurance rating board has performed
14 those tasks delegated to it by statute or regulation; (2) whether any of
15 those tasks would more appropriately be performed by any other entity,
16 including any government agency; and (3) the rate-making process for
17 workers' compensation insurance.

18 § 57-a. Subdivision 4 of section 27 of the workers' compensation law,
19 as amended by chapter 425 of the laws of 1985, is amended to read as
20 follows:

21 4. In the event of a review or appeal of any such award the value of
22 which has not been paid into the aggregate trust fund, if the amount of
23 award is modified or changed, the employer or insurance carrier shall
24 pay directly to the claimant compensation due to the date as of which
25 the present value of future benefits is payable into such fund, and to
26 the said fund the present value of future benefits, but if the original
27 award is affirmed, the employer or insurance carrier shall pay to such
28 fund the present value of the award computed as of the effective date of

29 the original award and simple interest on such amount at [~~three per~~
30 ~~centum per annum~~] the industry standard rate, as determined by the
31 superintendent of insurance by regulation, computed from the date of the
32 original award to the date that payment is made into such fund, plus
33 simple interest at the rate provided in section five thousand four of
34 the civil practice law and rules, on past due payments of compensation
35 to the date of the affirmance of such award, which past due payment and
36 interest shall be made directly to the claimant. The foregoing provision
37 shall apply in the event of such review or appeal regardless of whether
38 the widow or widower or other parties in interest have died or the widow
39 or widower remarried subsequent to the date as of which the present
40 value of the original award was computed. If any award, the present
41 value of which has been paid into the aggregate trust fund, is subse-
42 quently modified or changed by the board for any reason other than
43 because of subsequent death or remarriage, the amount equal to the pres-
44 ent value of the unpaid death benefits or other compensation at the
45 effective date of such modification or change shall be computed on the
46 basis both of the original award and of the modified or changed award.
47 If such amount is greater on the basis of the original award, the
48 difference shall be paid by said trust fund to the employer or insurance
49 carrier minus the cost, if any, of the actuarial computation made by or
50 on behalf of the board. If such amount is greater on the basis of the
51 modified or changed award, the difference shall be paid to said trust
52 fund by such employer or insurance carrier in addition to the cost, if
53 any, of the actuarial computation made by or on behalf of the board. In
54 the case of an accident, occurring on or subsequent to July first, nine-
55 teen hundred thirty-nine, where the present value of an award for perma-
56 nent total or permanent partial disability other than award for a defi-

1 nite number of weeks has been paid into the aggregate trust fund, if an
2 award is made for death resulting from the injury causing the said disa-
3 bility, the employer or insurance carrier which paid the present value
4 of said disability award into such fund shall be entitled to the differ-
5 ence between the amount paid into such fund and the sum disbursed from
6 such fund to the injured employee prior to his or her death, plus simple
7 interest on such difference at [~~three per centum per annum~~] the industry
8 standard rate. In the case of an accident occurring on or subsequent to
9 July first, nineteen hundred thirty-nine, where the present value of an
10 award for permanent partial disability for a definite number of weeks
11 has been paid into the aggregate trust fund, if the injured employee
12 dies prior to the end of such definite number of weeks, the employer or
13 insurance carrier which made the said payment into such fund shall be
14 entitled to the present value of the unexpended disability benefits not
15 payable to beneficiaries computed on the basis of annuities certain with
16 interest at the industry standard rate [~~of three per centum per annum~~],
17 minus however the cost, if any, of the actuarial computation made by or
18 on behalf of the board. In the case of a claim for the death of an
19 employee resulting from an accident occurring on or subsequent to Janu-
20 ary first, two thousand one, the present value of an award paid into the
21 aggregate trust fund shall be calculated based on the assumption that
22 any child while under the age of twenty-three years will be enrolled and
23 attending as a full time student in an accredited educational institu-
24 tion and would thereby be entitled to benefits for all periods while
25 under the age of twenty-three years. After all such children reach the
26 age of twenty-three, the aggregate trust fund shall refund to the carri-
27 er which paid such present value into such fund the portion of such
28 present value representing benefits for which such children were not

29 actually entitled because they were not enrolled and attending as a full
30 time student in an accredited educational institution plus simple inter-
31 est on such difference at the industry standard rate.

32 § 57-b. Section 27 of the workers' compensation law is amended by
33 adding a new subdivision 8 to read as follows:

34 8. In the case of a claim concerning which the aggregate trust fund
35 enters a waiver agreement pursuant to section thirty-two of this arti-
36 cle, the insurance carrier, as defined in subdivision twelve of section
37 two of this chapter, which paid the present value of the award for such
38 claim, shall not be entitled to a refund of any portion of the present
39 value of such award.

40 § 58. Paragraph 2 of subsection (e) of section 2304 of the insurance
41 law, as added by chapter 135 of the laws of 1998 and as renumbered by
42 chapter 86 of the laws of 2005, is amended to read as follows:

43 (2) The base rates applicable to employments classified under sections
44 two hundred twenty, two hundred forty and two hundred forty-one of the
45 labor law, provided such employments are classified under each of said
46 sections, shall be adjusted by the New York workers' compensation
47 [~~insurance~~] rating board beginning October first, nineteen hundred nine-
48 ty-nine to reflect the payroll limitations required by this section as
49 they separately affect such rates for work actually performed within
50 each of the following geographic territories:

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

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

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

1 § 59. Subsection (h) of section 2305 of the insurance law, as added by
2 chapter 729 of the laws of 1993, is amended to read as follows:

3 (h) The New York workers' compensation [~~insurance~~] rating board shall
4 incorporate an appropriate rate level decrease to reflect the reduction
5 of the thirteen percent surcharge on in-patient hospital charges
6 incurred for care provided on or after January first, nineteen hundred
7 ninety-four, for injury arising out of and in the course of employment,
8 or occupational disease.

9 § 60. Subsection (d) of section 2339 of the insurance law, as added by
10 chapter 838 of the laws of 1985, is amended to read as follows:

11 (d) Notwithstanding any other provision of law, the state insurance
12 fund shall not charge an insured or receive from an insured any rate in
13 excess of the rate promulgated by the [~~worker's~~] workers' compensation
14 [~~insurance~~] rating board which does not constitute a fair and reasonable
15 differential charge, giving due regard to the nature and hazards of his
16 business or operations, his prior loss experience, his prior and pres-
17 ently existing safety practices, his prior premium payment history, the
18 number of persons he employs in such business or operations and the
19 specific type of work they perform, his prior and current compliance
20 with obligations imposed upon him by the workers' compensation law and
21 other laws which require premium or other payments by him on the basis
22 of earnings and other remuneration earned by persons engaged in the
23 furtherance of his enterprise or enterprises, the promptness and
24 completeness of such reports as he has filed on accidents and claims,
25 and such other factors as may be relevant to the appraisal of the
26 insured or proposed insured as a risk in whole.

27 A premium rate for [~~worker's~~] workers' compensation and employer's
28 liability insurance charged to an employer by the state insurance fund

29 which is in excess of the rate promulgated by the [~~worker's~~] workers'
30 compensation [~~insurance~~] rating board may be challenged by the employer
31 by an appeal to the superintendent of insurance after an exhaustion by
32 the employer of all internal review procedures of the state insurance
33 fund as established by rules adopted by the commissioners of the state
34 insurance fund and filed with the secretary of state; provided that a
35 writing setting forth the grounds upon which such appeal is based is
36 served and filed with the superintendent of insurance and with the
37 secretary to the board of commissioners of the state insurance fund
38 within thirty days after a final determination by the state insurance
39 fund. Appeals to the superintendent of insurance shall be determined
40 upon papers and documents which were before the state insurance fund in
41 connection with the internal review procedures, the writing setting
42 forth the grounds of the employer's appeal and any answer thereto served
43 by the state insurance fund upon the employer and filed with the super-
44 intendent within thirty days after the service of the employer's notice.

45 § 61. Subdivision 6 of section 60 of the volunteer ambulance workers'
46 benefit law, as added by chapter 729 of the laws of 1993, is amended to
47 read as follows:

48 6. Assessments for the fund for reopened cases and for the operations
49 of the workers' compensation board shall not constitute elements of loss
50 but shall for recoupment purposes be treated as separate costs by carri-
51 ers. Carriers shall assess such costs on their policyholders in accord-
52 ance with rules set forth by the New York workers' compensation [~~insur-~~
53 ~~ance~~] rating board, as approved by the superintendent of insurance.

54 § 62. Subdivision 6 of section 60 of the volunteer firefighters' bene-
55 fit law, as added by chapter 729 of the laws of 1993, is amended to read
56 as follows:

1 6. Assessments for the fund for reopened cases and for the operations
2 of the workers' compensation board shall not constitute elements of loss
3 but shall for recoupment purposes be treated as separate costs by carri-
4 ers. Carriers shall assess such costs on their policyholders in accord-
5 ance with rules set forth by the New York workers' compensation [~~insur-~~
6 ~~ance~~] rating board, as approved by the superintendent of insurance.

7 § 63. Subdivision 1 of section 143 of the workers' compensation law,
8 as added by chapter 273 of the laws of 1989, is amended to read as
9 follows:

10 1. The board is authorized and empowered to use [~~optical disc technol-~~
11 ~~ogy~~] electronic means in accordance with section three hundred five of
12 the state technology law to record and maintain public records, papers,
13 documents or matters required by law to be recorded. Such records shall
14 be capable of being copied, photographed, or microphotographed by a
15 process which accurately reproduces the original thereof in all details.

16 § 64. Subdivision 3 of section 50 of the workers' compensation law, as
17 amended by chapter 468 of the laws of 1988, is amended to read as
18 follows:

19 3. By furnishing satisfactory proof to the [~~chairman~~] chair of his
20 financial ability to pay such compensation for himself, in which case
21 the [~~chairman~~] chair shall require the deposit with the [~~chairman~~] chair
22 of such securities as the [~~chairman~~] chair may deem necessary of the
23 kind prescribed in subdivisions one, two, three, four and five, and
24 [~~paragraph a~~] subparagraph (a) of paragraph three of subdivision seven
25 of section two hundred thirty-five of the banking law, or the deposit of
26 cash, or the filing of irrevocable letters of credit issued by a quali-
27 fied banking institution as defined by rules promulgated by the [~~chair-~~
28 ~~man~~] chair or the filing of a bond of a surety company authorized to

29 transact business in this state, in an amount to be determined by the
30 [~~chairman~~] chair, or the posting and filing as aforesaid of a combina-
31 tion of such securities, cash, irrevocable letters of credit and surety
32 bond in an amount to be determined by the [~~chairman~~] chair, to secure
33 his liability to pay the compensation provided in this chapter. Any such
34 surety bond must be approved as to form by the [~~chairman~~] chair. If an
35 employer posts and files a combination of securities, cash, irrevocable
36 letters of credit and surety bond as aforesaid, and if it becomes neces-
37 sary to use the same to pay the compensation provided in this chapter,
38 the [~~chairman~~] chair shall first use such securities or cash or irrev-
39 ocable letters of credit and, when the full amount thereof has been
40 exhausted, he shall then require the surety to pay forthwith to the
41 [~~chairman~~] chair all or any part of the penal sum of the bond for that
42 purpose. The [~~chairman~~] chair may also require an agreement on the part
43 of the employer to pay any awards commuted under section twenty-seven of
44 this chapter, into the special fund of the state fund, as a condition of
45 his being allowed to remain uninsured pursuant to this section. The
46 [~~chairman~~] chair shall have the authority to deny the application of an
47 employer to pay such compensation for himself or to revoke his consent
48 furnished, under this section at any time, for good cause shown. The
49 employer qualifying under this subdivision shall be known as a self-in-
50 surer.

51 If for any reason the status of an employer under this subdivision is
52 terminated, the securities or the surety bond, or the securities, cash,
53 or irrevocable letters of credit and surety bond, on deposit referred to
54 herein shall remain in the custody of the [~~chairman~~] chair for a period
55 of at least twenty-six months. At the expiration of such time or such
56 further time period as the [~~chairman~~] chair may deem proper and

1 warranted under the circumstances, and so designates, the [~~chairman~~
2 chair] may accept in lieu thereof, and for the additional purpose of
3 securing such further and future contingent liability as may arise from
4 prior injuries to workers and be incurred by reason of any change in
5 condition of such workers warranting the board making subsequent awards
6 for payment of additional compensation, a policy of insurance furnished
7 by the employer, his heirs or assigns or others carrying on or liquidat-
8 ing such business. Such policy shall be in a form approved by the super-
9 intendent of insurance and issued by the state fund or any insurance
10 company licensed to issue this class of insurance in this state. It
11 shall only be issued for a single complete premium payment in advance by
12 the employer. It shall be given in an amount to be determined by the
13 [~~chairman~~] chair and when issued shall be non-cancellable for any cause
14 during the continuance of the liability secured and so covered.

15 The board will report to the governor and the legislature on or before
16 December first, two thousand seven, as to the advisability and feasibil-
17 ity of (1) implementing a statewide self-insured employer bond program,
18 and (2) an improved individual employer bond program.

19 § 65. Paragraph c of subdivision 5 of section 50 of the workers'
20 compensation law, as amended by chapter 468 of the laws of 1988, is
21 amended to read as follows:

22 c. The [~~chairman~~] chair and the department of audit and control as
23 soon as practicable after May first, nineteen hundred sixty, and annual-
24 ly thereafter, as soon as practicable after April first in each succeed-
25 ing year, shall ascertain the total amount of expenses, including in
26 addition to the direct costs of personal services, the cost of mainte-
27 nance and operation, the cost of retirement contributions made and work-
28 ers' compensation premiums paid by the State for or on account of

29 personnel, rentals for space occupied in state owned or state leased
30 buildings, and all [~~other~~] direct or indirect costs incurred by the
31 board during the preceding fiscal year in carrying out the provisions of
32 subdivision three of this section. Such expenses shall be assessed
33 against all self-insurers including for this purpose employers who have
34 ceased to exercise the privilege of self-insurance [~~but whose securi-~~
35 ~~ties, irrevocable letters of credit or cash are retained on deposit or,~~
36 ~~in the case of an employer who has filed a surety bond, for whom securi-~~
37 ~~ties would have been required to be kept on deposit in accordance with~~
38 ~~the rules and regulations of the chairman, had no surety bond been~~
39 ~~filed]. The basis of apportionment of the assessment against each self-~~
40 ~~insurer shall [be that proportion of such expenses that (1) the total of~~
41 ~~the securities, irrevocable letters of credit, or cash of such self in-~~
42 ~~surer on deposit with the chairman at the close of the preceding fiscal~~
43 ~~year, or (2) in the case of an employer who is exercising the privilege~~
44 ~~of self-insurance and who has filed a surety bond, the penal sum of said~~
45 ~~bond at the close of the preceding fiscal year, or (3) in the case of an~~
46 ~~employer who had filed a surety bond, but who had ceased to exercise the~~
47 ~~privilege of self-insurance prior to the close of the preceding fiscal~~
48 ~~year, the amount of securities the employer would have been required by~~
49 ~~the chairman to have on deposit at the close of said year had no bond~~
50 ~~been filed, bears to the total of (1), (2) and (3) above for all self-~~
51 ~~insurers] be a sum equal to that proportion of the amount which the pure~~
52 ~~premium calculation for each self-insurer bore to the total pure premium~~
53 ~~calculation for all self-insurers for the calendar year which ended~~
54 ~~within the preceding state fiscal year. For purposes of this section~~
55 ~~"pure premium calculation" means the New York state annual payroll as of~~
56 ~~December thirty-first of the preceding year by class code for each indi-~~

1 vidually self-insured employer or employer member of a group self-insur-
2 er multiplied by the applicable rate for each class code as determined
3 by the workers' compensation rating board in effect on December thirty-
4 first of the preceding year. All such assessments when collected shall
5 be deposited into a fund which shall be used to reimburse the [~~state~~
6 ~~treasury for~~] appropriations theretofore made by the state for the
7 payment [~~in the first instance~~] of the expenses of administering this
8 chapter.

9 § 66. The closing paragraph of subdivision 7 of section 27 of the
10 workers' compensation law, as amended by chapter 62 of the laws of 1989,
11 is amended to read as follows:

12 Such additional payments shall be required until the surplus of the
13 fund equals or exceeds one per centum of the total outstanding loss
14 reserves as shown by three successive annual reports of the fund to the
15 superintendent of insurance and such additional payment shall be
16 required as a payment upon each award based on an accident occurring
17 prior to July first next succeeding the third such annual report, but
18 not as a payment upon any award based on an accident occurring on or
19 after said July first; provided, however, that if and when the surplus
20 of the fund as shown by any annual report thereafter shall be less than
21 one per centum of the total outstanding loss reserves, then the addi-
22 tional payments as provided in paragraphs (a), (b), (c) and (d) of this
23 subdivision shall be resumed and shall be payable upon any award based
24 on an accident occurring on or after July first next succeeding the
25 close of the year for which such annual report is made. Thereafter, the
26 suspension or resumption of additional payments as required by this
27 subdivision shall be governed by the foregoing provisions. Such loss
28 reserves shall be computed based upon the tables specified in subdivi-

29 sion five of this section [~~twenty seven of this law~~] and interest at
30 [~~six per centum per annum~~] a standard to be determined by the super-
31 intendent of insurance by regulation.

32 § 67. Section 2313 of the insurance law is amended by adding a new
33 subsection (s) to read as follows:

34 (s) Notwithstanding any other provision of this article, no rate
35 service organization may file rates, rating plans or other statistical
36 information for workers' compensation insurance after February first,
37 two thousand eight. Notwithstanding subsection (j) of this section, any
38 such rate service organization shall nonetheless be required to be
39 licensed pursuant to this section.

40 § 68. Paragraph 2 of subsection (a) of section 2316 of the insurance
41 law is amended to read as follows:

42 (2) No insurer or rate service organization shall agree with any other
43 insurer or rate service organization to charge or adhere to any rate,
44 although insurers and rate service organizations, other than rate
45 service organizations with respect to workers' compensation insurance,
46 may continue to exchange statistical information.

47 § 69. Section 125 of the workers' compensation law, as added by chap-
48 ter 308 of the laws of 1991, is amended to read as follows:

49 § 125. Job discrimination prohibited based on prior receipt of bene-
50 fits. 1. It shall be unlawful for any employer to inquire into, or to
51 consider for the purpose of assessing fitness or capability for employ-
52 ment, whether a job applicant has filed for or received benefits under
53 this chapter, or to discriminate against a job applicant with regard to
54 employment on the basis of that claimant having filed for or received
55 benefits under this chapter, or because the claimant is an injured
56 veteran. An individual aggrieved under this subdivision may initiate

1 proceedings in a court of competent jurisdiction seeking damages,
2 including reasonable attorney fees, for violation of this subdivision.

3 2. An employer who violates the provisions of subdivision one of this
4 section shall be guilty of a misdemeanor, and upon conviction shall be
5 punished, except as in this chapter or in the penal law otherwise
6 provided, by a fine of not more than one thousand dollars, and subject
7 to the debarment provisions of section one hundred forty-one-b of this
8 chapter.

9 § 70. The workers' compensation law is amended by adding a new section
10 125-a to read as follows:

11 § 125-a. Discriminating against an injured veteran. 1. An insurance
12 carrier is guilty of unlawfully discriminating against an injured veter-
13 an when with respect to workers' compensation insurance, the insurer
14 knowingly and intentionally (a) discriminates against an injured veteran
15 because of the veteran's injury or status as a veteran, or (b) discour-
16 ages or causes an employer or other entity to unlawfully discriminate
17 against an injured veteran in hiring or discharging decisions because of
18 the veteran's injury or status as a veteran.

19 2. For the purpose of this section (a) "injured veteran" shall mean an
20 individual who suffered an injury as a result of his or her service in
21 the armed forces; and (b) "insurance carrier" shall be defined as in
22 subdivision twelve of section two of this chapter.

23 3. Discriminating against an injured veteran is a class A misdemeanor.

24 4. Any person convicted under this section shall be subject to the
25 debarment provisions of section one hundred forty-one-b of this chapter.

26 § 71. Subdivision 5 of section 27 of the workers' compensation law, as
27 amended by chapter 415 of the laws of 1983, is amended to read as
28 follows:

29 5. All computations made by the board shall be upon the basis of the
30 survivorship annuitants table of mortality, the remarriage tables of the
31 Dutch Royal Insurance Institution and interest at three and one-half per
32 centum per annum on claims based on accidents occurring up to and
33 including June thirtieth, nineteen hundred thirty-nine, at three per
34 centum per annum on claims based on accidents occurring from July first,
35 nineteen hundred thirty-nine up to and including August thirty-first,
36 nineteen hundred eighty-three, [~~and~~] at six per centum per annum on
37 claims based on accidents occurring from September first, nineteen
38 hundred eighty-three up to and including December thirty-first, two
39 thousand and at the industry standard rate on claims based on accidents
40 occurring thereafter, except (a) that computations of present values of
41 death benefits required to be paid into the aggregate trust fund by an
42 insurance carrier which is a stock corporation or a mutual association
43 shall be based, in the case of a dependent parent, grandparent, blind or
44 physically disabled child or spouse, upon said table of mortality disre-
45 garding possible change in or termination of dependency, with interest
46 at three and one-half per centum per annum on claims based on accidents
47 occurring up to and including June thirtieth, nineteen hundred thirty-
48 nine, at three per centum per annum on claims based on accidents occur-
49 ring from July first, nineteen hundred thirty-nine up to and including
50 August thirty-first, nineteen hundred eighty-three, [~~and~~] at six per
51 centum per annum on claims based on accidents occurring from September
52 first, nineteen hundred eighty-three up to and including December thir-
53 ty-first, two thousand and at the industry standard rate on claims based
54 on accidents occurring thereafter and (b) that computations of present
55 values of permanent partial disability benefits awarded for a definite
56 number of weeks shall be on the basis of annuities certain with interest

1 at three and one-half per centum per annum on claims based on accidents
2 occurring up to and including June thirtieth, nineteen hundred thirty-
3 nine, at three per centum per annum on claims based on accidents occur-
4 ring from July first, nineteen hundred thirty-nine up to and including
5 August thirty-first, nineteen hundred eighty-three [~~and~~], at six per
6 centum per annum on claims based on accidents occurring from September
7 first, nineteen hundred eighty-three up to and including December thir-
8 ty-first, two thousand and at the industry standard rate on claims based
9 on accidents occurring thereafter.

10 § 72. Subdivision 1 of section 13-j of the workers' compensation law,
11 as amended by chapter 113 of the laws of 1946, is amended to read as
12 follows:

13 (1) An insurance carrier shall not participate in the treatment of
14 injured [~~workmen~~] workers, except as provided in paragraph five of
15 subdivision (i) of section thirteen of this article and subdivision
16 seven of section thirteen-a of this article and except, that it may
17 employ medical inspectors to examine compensation cases periodically,
18 while under treatment, and report upon the adequacy of medical care, and
19 other matters relative to the medical conduct of the case, a copy of
20 which report shall be filed directly with the [~~chairman~~] chair within
21 ten days, and that it may maintain rehabilitation bureaus operated by
22 qualified physicians if authorized by the [~~chairman~~] chair in accordance
23 with section thirteen-c of this [~~chapter~~] article.

24 § 73. Subdivision (a) of section 32 of the workers' compensation law,
25 as added by chapter 635 of the laws of 1996, is amended to read as
26 follows:

27 (a) Whenever a claim has been filed, the claimant or the deceased
28 claimant's dependents and the employer [~~or his~~], its carrier, the

29 special disability fund as set forth in subdivision (e) of this section,
30 or the aggregate trust fund, if the board has directed that the present
31 value of any unpaid compensation be paid into such fund pursuant to
32 section twenty-seven of this article, may enter into an agreement settl-
33 ing upon and determining the compensation and other benefits due to the
34 claimant or [~~their~~] his or her dependents. The agreement shall not bind
35 the parties to it, unless it is approved by the board. Such agreements,
36 when so approved, notwithstanding any other provisions, shall be final
37 and conclusive upon the claimant, the [~~claimants~~] claimant's dependents,
38 the employer [~~and the~~], its insurance carrier, the aggregate trust fund
39 and the special disability fund. Every insurance carrier as defined in
40 subdivision twelve of section two of this chapter shall offer each
41 claimant the opportunity to enter into an agreement settling upon and
42 determining the compensation and other benefits due, in the case of
43 disability, within two years after the date the claim was indexed by the
44 board or six months after the claimant is classified with a permanent
45 disability, whichever is later, and in the case of death, within six
46 months after entitlement to benefits is established for all benefici-
47 aries. The offer made by the insurance carrier shall clearly state what
48 portion of the offer is (i) for compensation as defined in subdivision
49 six of section two of this chapter, if any; (ii) for medical benefits,
50 including prescription medicine, if any; and (iii) for the fee of the
51 attorney or licensed representative, if any. If a claimant is repres-
52 ented by an attorney or licensed representative, the insurance carrier
53 shall present such offer to such legal representative. If a claimant is
54 not represented by an attorney or a licensed representative, the insur-
55 ance carrier shall, in addition to the offer to enter into a settlement

1 agreement, provide the claimant with a statement of his or her rights,
2 obligations and potential liability if the offer is accepted.

3 § 74. Section 32 of the workers' compensation law is amended by adding
4 five new subdivisions (e), (f), (g), (h) and (i) to read as follows:

5 (e) The chair shall establish an office under his or her supervision
6 to be known as the "waiver agreement management office," to negotiate
7 and seek board approval for waiver agreements on behalf of the special
8 disability fund. The office shall operate in accordance with guidelines
9 or directives that the chair may issue, as approved by the special disa-
10 bility fund advisory committee, or in the absence of such guidelines or
11 directives, using such discounting factors as the office determines are
12 in the financial interest of the special disability fund. The waiver
13 agreement management office on behalf of the special disability fund may
14 enter into a waiver agreement with a claimant only when the special
15 disability fund has been found liable by the board to reimburse the
16 claimant's employer, insurance carrier or the state insurance fund.
17 Notwithstanding any other provisions of law, no consultation or approval
18 of any employer, insurance carrier, self-insurer, the state insurance
19 fund, or the special funds conservation committee shall be required
20 before such office may enter into any waiver agreement, or before the
21 board may approve such waiver agreement. The chair may, in his or her
22 discretion, and as approved by the special disability fund advisory
23 committee, terminate the operation of the waiver agreement management
24 office, if he or she believes it no longer serves the interest of the
25 special disability fund.

26 (f) A claimant's executed waiver agreement with the waiver agreement
27 management office shall be final and conclusive upon the claimant, the
28 claimant's dependents, and any employer, self-insurer, insurance carri-

29 er, the state insurance fund and the special disability fund as to all
30 claims by the claimant, and as to any claim or request for reimbursement
31 from the special disability fund for payments not yet made. The waiver
32 agreement management office shall give written notice to any employer,
33 insurance carrier or the state insurance fund entitled to receive
34 reimbursement from the special disability fund in regard to any claim-
35 ant, of any waiver agreement signed by the office with such claimant
36 within fourteen days of submitting the waiver agreement to the board for
37 approval.

38 (g) Nothing in this section shall prohibit any insurance carrier,
39 employer, the state insurance fund, or the waiver agreement management
40 office on behalf of the special disability fund from jointly entering
41 into a waiver agreement with a claimant, by which the joint signatories
42 may apportion responsibility for making any payments required under the
43 agreement. The agreement shall set forth the obligations of the signa-
44 tories to make such payments, and shall identify, as to each obligation
45 thereunder: (1) the signatory that has the legal obligation to carry out
46 that provision, or (2) that all signatories are jointly and severally
47 liable under the provision.

48 (h) Neither the establishment of the waiver agreement management
49 office, nor any action taken by that office, shall serve as grounds for
50 the board's disapproval of any waiver agreement to which the office is
51 not a party, or otherwise permit any party to withdraw from such a waiv-
52 er agreement.

53 (i) (1) The waiver agreement management office may contract with any
54 third party to manage, administer, or settle claims on its behalf, so
55 long as (A) such contract is approved by the special disability fund

1 advisory committee and (B) such third party shall agree to be subject to
2 any guidelines or directives as the chair may issue.

3 (2) The chair, with approval of the special disability fund advisory
4 committee and on such terms as the committee deems appropriate, shall
5 have discretion to procure one or more private entities to assume the
6 liability for and management, administration or settlement of all or a
7 portion of the claims in the special disability fund. Any such procure-
8 ment shall be conducted in accordance with state finance law, except as
9 otherwise set forth below. The chair shall not award any contract that
10 has not been approved by the special disability fund advisory committee.
11 Notwithstanding the foregoing, the chair of the workers' compensation
12 board may, if approved by the special disability fund advisory commit-
13 tee, and on such terms as the committee deems appropriate:

14 (A) waive any informality in a bid, and either reject all bids and
15 again advertise for bids, or interview at least two responsible quali-
16 fied bidders and negotiate and enter into a contract with one or more of
17 such bidders; or

18 (B) group claims to be assigned, in whole or in part, based on the
19 insurance carrier, self-insured employer or state insurance fund that is
20 receiving or will receive reimbursement on those claims from the second
21 disability fund. Such grouping shall be permissible notwithstanding that
22 any insurance carrier may have greater access to information, or may be
23 able to provide better terms, in regard to claims so grouped.

24 (3) Any such contract shall expressly provide that the special disa-
25 bility fund is no longer liable for the claims covered by the contract,
26 and require security of either cash, an indemnity policy, or such secu-
27 rity as is otherwise sufficient to cover any losses incurred as a result
28 of the failure or default of the entity or entities awarded any such

29 contract, including as a result of the insolvency of any such entity.
30 The chair may waive all or part of such security, and may impose other
31 reasonable methods of insuring payment, upon approval of the special
32 disability fund advisory committee.

33 (4) Notwithstanding any other provision of this article, the waiver
34 agreement management office may request in writing any information rele-
35 vant to its entry into or management of waiver agreements from (A) any
36 insurance carrier, employer, or the state insurance fund, if that entity
37 has submitted a claim for reimbursement from the special disability fund
38 as to the claimant to whom the information relates; or (B) the special
39 funds conservation committee. The party to whom the request is made
40 shall provide the requested information within fourteen days of the
41 request, unless before that date it files an objection with the board to
42 any information which is subject to a recognized privilege or whose
43 production is otherwise barred by law. The objecting party shall provide
44 the requested information within five business days of the board's
45 rejection of its objection.

46 (5) No carrier, self-insured employer or the state insurance fund
47 shall assume the liability for, or management, administration or settle-
48 ment of any claims under this section on which it holds reserves, beyond
49 such reserves as are permitted by regulation of the superintendent of
50 insurance for purposes of this provision. No carrier may assume liabil-
51 ity for any claims in the special disability fund under this paragraph
52 unless the carrier maintains, on a stand alone basis, separate from its
53 parent or any affiliated entities, an interactive financial strength
54 rating from a nationally recognized statistical rating organization that
55 is considered secure or deemed acceptable by the special disability fund
56 advisory committee.

1 (6) The director of the budget shall notify in writing the chairs of
2 the senate finance committee and the assembly ways and means committee
3 of any plans to transfer all or a portion of the portfolio of claims
4 determined to be eligible for reimbursement from the special disability
5 fund or to contract with any party to take responsibility in whole or in
6 part for the administration of a material portion of the claims, includ-
7 ing the procurement process to be used to select parties involved in
8 such transfer or contract, not less than forty-five days prior to the
9 commencement of such process. At any time borrowing is anticipated to
10 settle claims, the chief executive officer of the dormitory authority of
11 the state of New York and the director of the budget shall provide a
12 report to the chairs of the senate finance committee and the assembly
13 ways and means committee on a planned bond sale of the authority and
14 such report shall include, but not be limited to: (A) the maximum amount
15 of bonds expected to be sold by the authority in connection with a sale
16 agreement; (B) the expected maximum interest rate and maturity date of
17 such bonds; (C) the expected amount of the bonds that will be fixed
18 and/or variable interest rate; (D) the estimated costs of issuance; (E)
19 the estimated level or levels of reserve fund or funds, if any; (F) the
20 estimated cost of bond issuance, if any; (G) the anticipated use or uses
21 of the proceeds; (H) the maximum expected net proceeds that will be paid
22 to the state as a result of the issuance of such bonds; and (I) the
23 process to be used to select parties to the transaction. Any such expect-
24 tations and estimates in the report shall not be deemed a substantive
25 limitation on the authority of the dormitory authority of the state of
26 New York.

27 § 75. Paragraphs (ee) and (f) of subdivision 8 of section 15 of the
28 workers' compensation law, as amended by chapter 635 of the laws of

29 1996, are amended to read as follows:

30 (ee) If an employee of an employer who has secured the payment of
31 compensation as required under the provisions of section fifty of this
32 chapter is disabled from silicosis or other dust disease, or in the
33 event of death, death was due to silicosis or other dust disease, and if
34 such an employee has been subject to an injurious exposure in an employ-
35 ment defined under paragraph twenty-nine of subdivision two of section
36 three of this chapter, the provisions of this subdivision shall apply
37 except as hereinafter stated; and it shall not be required that the
38 employee had, either at the time of hiring or during the employment, any
39 previous physical condition or disability which may result in such disa-
40 bility or death. In all such cases the employer or his insurance carri-
41 er shall in the first instance pay all awards of compensation and all
42 medical expense provided by this chapter; and in the event of death, the
43 employer or his insurance carrier shall also in the first instance pay
44 the funeral expenses and the death benefits prescribed by this chapter;
45 but such employer or his insurance carrier shall subject to the limita-
46 tions of subparagraphs two and three of paragraph (h) of this subdivi-
47 sion be reimbursed from the special disability fund created by this
48 subdivision for all compensation and medical benefits subsequent to
49 those payable for the first one hundred four weeks of disability for
50 claims where the date of accident or date of disablement occurred prior
51 to August first, nineteen hundred ninety-four, and two hundred sixty
52 weeks of disability for claims where the date of accident or date of
53 disablement occurred on or after August first, nineteen hundred ninety-
54 four, and, in the event of death, the employer or his insurance carrier
55 shall be reimbursed from the special disability fund created by this
56 subdivision for all death benefits payable in excess of one hundred four

1 weeks for claims where the date of accident or date of disablement
2 occurred prior to August first, nineteen hundred ninety-four, and two
3 hundred sixty weeks for claims where the date of accident or date of
4 disablement occurred on or after August first, nineteen hundred ninety-
5 four; provided, however, that when total disability or death occurred
6 after July first, nineteen hundred forty-seven, and prior to July first,
7 nineteen hundred seventy-four, the employer or his insurance carrier
8 shall be reimbursed from the special disability fund created by this
9 subdivision for all compensation and medical benefits including funeral
10 expenses and death benefits subsequent to those payable for the first
11 two hundred sixty weeks of disability and death benefits combined; and
12 further provided, however, that in the event of death due to silicosis
13 or other dust disease on or after July first, nineteen hundred forty-
14 seven, of such an employee who shall have been totally disabled from
15 silicosis or other dust disease prior to such date, the employer or his
16 insurance carrier shall be reimbursed from the special disability fund
17 created by this subdivision for death benefits subsequent to those paya-
18 ble for the first one hundred four weeks.

19 The compensation of an employee who has heretofore been found to be
20 totally and permanently disabled from silicosis or other dust disease
21 and whose disablement occurred prior to July first, nineteen hundred
22 forty-seven, shall be continued or resumed, as the case may be, after
23 June first, nineteen hundred fifty-one, and payments shall be made
24 during continuance of such disability at his/her regular weekly rate,
25 notwithstanding the fact that such compensation is in excess of the
26 maximum provided for his/her case under former article four-a of this
27 chapter; but such compensation in excess of the maximum so provided
28 shall be paid from the special fund created by this subdivision.

29 (f) Any award under this subdivision shall be made against the employ-
30 er or his or her insurance carrier, but if such employer or insurance
31 carrier be entitled to reimbursement as provided in this subdivision,
32 notice or claim of the right to such reimbursement shall be filed with
33 the board in writing prior to the final determination that the resulting
34 disability is permanent, but in no case more than one hundred four weeks
35 after the date of disability or death or fifty-two weeks after the date
36 that a claim for compensation is filed with the chair, whichever is
37 later, or in the event of the reopening of a case theretofore closed, no
38 later than the determination of permanency upon such reopening. In no
39 event shall such a notice of claim be filed beyond the dates set forth
40 in subparagraph two of paragraph (h) of this subdivision.

41 The employer or his or her insurance carrier shall in the first
42 instance make the payments of compensation and medical expenses provided
43 by this subdivision. Whenever for any reason payments are not made by
44 the employer or his or her insurance carrier at any time after the
45 payments have been made for the first one hundred four weeks for claims
46 where the date of accident or date of disablement occurred prior to
47 August first, nineteen hundred ninety-four, and two hundred sixty weeks
48 for claims where the date of accident or date of disablement occurred on
49 or after August first, nineteen hundred ninety-four, the payments of
50 subsequent compensation and medical expenses shall be made out of the
51 special disability fund by the commissioner of taxation and finance upon
52 vouchers approved by the chair of the workers' compensation board. In
53 case any payments prior to the expiration of the first one hundred four
54 weeks for claims where the date of accident or date of disablement
55 occurred prior to August first, nineteen hundred ninety-four, and two
56 hundred sixty weeks for claims where the date of accident or date of

1 disablement occurred on or after August first, nineteen hundred ninety-
2 four are not made by the employer or his or her insurance carrier by
3 reason of the insolvency of such carrier, the payments until the expira-
4 tion of one hundred four weeks for claims where the date of accident or
5 date of disablement occurred prior to August first, nineteen hundred
6 ninety-four, and two hundred sixty weeks for claims where the date of
7 accident or date of disablement occurred on or after August first, nine-
8 teen hundred ninety-four shall be made out of the stock workers' compen-
9 sation security fund created by the provisions of section one hundred
10 seven of this chapter if the insolvent carrier be a stock company, or
11 out of the mutual workers' compensation security fund created under the
12 provisions of section one hundred nine-d of this chapter if the carrier
13 be a mutual company. If any such payments are not made by an employer
14 permitted to secure the payment of compensation pursuant to the
15 provisions of subdivision three of section fifty of this chapter, the
16 payments shall be made out of the proceeds of the sale of any securities
17 deposited by the employer with the chair, upon vouchers approved by the
18 chair, until such payments have been made for one hundred four weeks for
19 claims where the date of accident or date of disablement occurred prior
20 to August first, nineteen hundred ninety-four, and two hundred sixty
21 weeks for claims where the date of accident or date of disablement
22 occurred on or after August first, nineteen hundred ninety-four, from
23 the date of disability, after which date they shall be made out of the
24 special disability fund in the manner above provided.

25 In all cases in which awards have been made and charged against the
26 special fund or injuries have occurred which would require payments to
27 be made in accordance with the provisions of former subdivision eight of
28 this section as it existed immediately prior to the time this subdivi-

29 sion, as hereby added, takes effect, the compensation so awarded or that
30 shall be awarded in such cases shall continue to be paid out of the
31 special disability fund by the commissioner of taxation and finance upon
32 vouchers approved by the chair of the workers' compensation board, as
33 though this subdivision had not been enacted.

34 § 76. Paragraph (h) of subdivision 8 of section 15 of the workers'
35 compensation law, as amended by chapter 510 of the laws of 2000, is
36 amended to read as follows:

37 (h) Special disability fund. (1) The fund heretofore maintained and
38 provided for by and pursuant to former subdivision eight of this
39 section, is hereby continued and shall retain the liabilities heretofore
40 charged or chargeable thereto under the provisions of such former subdi-
41 vision eight of this section as it existed immediately prior to the time
42 this subdivision, as hereby added, takes effect, and the liabilities
43 chargeable thereto under the provisions of former subdivision eight-a of
44 this section as added by chapter seven hundred forty-nine of the laws of
45 nineteen hundred forty-four and repealed at the same time this subdivi-
46 sion, as [~~hereby~~] heretofore added, takes effect, and payments therefrom
47 on account of such liabilities shall continue to be made as provided
48 herein. The said fund shall be known as the special disability fund and
49 shall be available only for the purposes stated in this subdivision, and
50 the assets thereof shall not at any time be appropriated or diverted to
51 any other use or purpose.

52 (2) (A) No carrier or employer, or the state insurance fund, may file
53 a claim for reimbursement from the special disability fund, for an inju-
54 ry or illness with a date of accident or date of disablement on or after
55 July first, two thousand seven. No carrier or employer, or the state
56 insurance fund, may file a claim for reimbursement from the special

1 disability fund after July first, two thousand ten, and no written
2 submissions or evidence in support of such a claim may be submitted
3 after that date.

4 (B) All requests for reimbursement from the special disability fund
5 with a date of injury or date of disablement prior to July first, two
6 thousand seven as to which the board has determined that the special
7 disability fund is liable must be submitted to the special disability
8 fund by the later of (i) one year after the expense has been paid, or
9 (ii) one year from the effective date of this paragraph.

10 (C) All claims for reimbursement from the special disability fund must
11 be accompanied by a filing fee of two hundred fifty dollars, to be
12 deposited in the special disability fund. Upon any final ruling that a
13 claim is eligible for reimbursement from the fund, the fund will return
14 two hundred dollars of this fee to the claimant.

15 (3) The chair of the board shall, as soon as practicable after April
16 first, nineteen hundred forty-five, assess upon and collect from each
17 insurance carrier, including the state insurance fund and any county,
18 city, town, village or other political subdivision failing to secure
19 compensation pursuant to subdivision one or two of section fifty of this
20 chapter, a sum equal to one per centum of the total compensation paid by
21 such carrier in the year ending March thirty-first next preceding the
22 date of such assessment.

23 (4) As soon as practicable after May first in the year nineteen
24 hundred fifty-eight, and annually thereafter as soon as practicable
25 after January first in each succeeding year, the chair of the board
26 shall assess upon and collect from all self-insurers, except group self-
27 insurers, the state insurance fund, [~~and~~] all insurance carriers and
28 group self-insurers, (A) a sum equal to one hundred fifty per centum of

29 the total disbursements made from the special disability fund during the
30 preceding calendar year (not including any disbursements made on account
31 of anticipated liabilities or waiver agreements funded by bond proceeds
32 and related earnings), less the amount of the net assets in such fund as
33 of December thirty-first of said preceding calendar year, and (B) a sum
34 sufficient to cover debt service, and associated costs (the "debt
35 service assessment") to be paid during the calendar year by the dormito-
36 ry authority, as calculated in accordance with subparagraph five of this
37 paragraph. Such [~~sum~~] assessments shall be allocated to (i) self-insur-
38 ers except group self-insurers and the state insurance fund based upon
39 the proportion that the total compensation payments made by all self-in-
40 surers except group self-insurers and the state insurance fund bore to
41 the total compensation payments made by all self-insurers except group
42 self-insurers, the state insurance fund [~~and~~], all insurance carriers
43 and group self-insurers [~~and~~], (ii) insurance carriers based upon the
44 proportion that the total compensation payments made by all insurance
45 carriers bore to the total compensation payments by all self-insurers
46 except group self-insurers, the state insurance fund and all insurance
47 carriers and group self-insurers during the fiscal year which ended
48 within said preceding calendar year, and (iii) group self-insurers based
49 upon the proportion that the total compensation payments made by all
50 group self-insurers bore to the total compensation payments made by all
51 self-insurers, the state insurance fund and all insurance carriers
52 during the fiscal year which ended within said preceding calendar year.
53 Insurance carriers and self-insurers shall be liable for all such
54 assessments regardless of the date on which they came into existence, or
55 whether they have made any claim for reimbursement from the special
56 disability fund. The portion of such sum allocated to self-insurers

1 except group self-insurers and the state insurance fund that shall be
2 collected from each self-insurer except a group self-insurer and the
3 state insurance fund shall be a sum equal to the proportion of the
4 amount which the total compensation payments of each such self-insurer
5 except a group self-insurer or the state insurance fund bore to the
6 total compensation payments made by all self-insurers except group self-
7 insurers and the state insurance fund during the fiscal year which ended
8 within said preceding calendar year. The portion of such sum allocated
9 to insurance carriers that shall be collected from each insurance carri-
10 er shall be a sum equal to that proportion of the amount which the total
11 premiums written by each such insurance carrier bore to the total writ-
12 ten premiums reported by all insurance carriers during the fiscal year
13 which ended within said preceding calendar year. The portion of such
14 sum allocated to group self-insurers that shall be collected from each
15 group self-insurer shall be a sum equal to that proportion of the amount
16 which the pure premium calculation for each such group self-insurer bore
17 to the total pure premium calculation for all group self-insurers for
18 the calendar year which ended within the preceding state fiscal year.
19 The payments from the debt service assessment, unless otherwise set
20 forth in the financing agreement, are hereby pledged therefor and shall
21 be deemed the first monies received on account of assessments in each
22 year. For the purposes of this paragraph, "direct premiums written"
23 means gross premiums, including policy and membership fees, less return
24 premiums and premiums on [~~polices~~] policies not taken. For purposes of
25 this paragraph "pure premium calculation" means the New York state annu-
26 al payroll as of December thirty-first of the preceding year by class
27 code for each employer member of a group self-insurer multiplied by the
28 applicable rate for each class code as determined by the workers'

29 compensation rating board in effect on December thirty-first of the
30 preceding year. An employer who has ceased to be a self-insurer or a
31 group that ceases to be licensed as a group self-insurer shall continue
32 to be liable for any assessments into said fund on account of any
33 compensation payments made by him or her on his or her account during
34 such fiscal year, and the security fund, created under the provisions of
35 section one hundred seven of this chapter, shall, in the event of the
36 insolvency of any insurance company, be liable for any assessments that
37 would have been made against such company except for its insolvency. No
38 assessment shall be payable from the aggregate trust fund, created under
39 the provisions of section twenty-seven of this article, but such fund
40 shall continue to be liable for all compensation that shall be payable
41 under any award or order of the board, the commuted value of which has
42 been paid into such fund. Such assessments when collected shall be
43 deposited with the commissioner of taxation and finance for the benefit
44 of such fund. [~~Such~~ Unless otherwise provided, such assessments, shall
45 not constitute an element of loss for the purpose of establishing rates
46 for [~~workers'~~] compensation insurance but shall for the purpose of
47 collection be treated as separate costs by carriers. All insurance
48 carriers and the state insurance fund, shall collect such assessments,
49 from their policyholders through a surcharge based on [~~premium~~] premiums
50 in accordance with rules set forth by the New York workers' compensation
51 [~~insurance~~] rating board, as approved by the superintendent of insur-
52 ance. Such surcharge shall be considered as part of premium for purposes
53 prescribed by law including, but not limited to, computing premium tax,
54 reporting to the superintendent of insurance pursuant to section nine-
55 ty-nine of this chapter and section three hundred seven of the insurance
56 law, determining the limitation of expenditures for the administration

1 of the state insurance fund pursuant to section eighty-eight of this
2 chapter and the cancellation by an insurance carrier, including the
3 state insurance fund, of a policy for non-payment of premium. The
4 provisions of this paragraph shall not apply with respect to policies
5 containing coverage pursuant to subsection (j) of section three thousand
6 four hundred twenty of the insurance law relating to every policy
7 providing comprehensive personal liability insurance on a one, two,
8 three or four family owner-occupied dwelling. The state insurance fund
9 shall, [~~on or before April first, nineteen hundred ninety four,~~] notify
10 its insureds that such assessments, shall be, for the purpose of recoup-
11 ment, treated as separate costs, respectively for the purpose of premi-
12 ums billed on [~~and~~] or after October first, nineteen hundred ninety-
13 four.

14 For the purposes of this paragraph, except as otherwise provided[~~7~~]:
15 the term "insurance carrier" shall include only stock corporations,
16 mutual corporations and reciprocal insurers authorized to transact the
17 business of workers' compensation insurance in this state [~~and~~]; the
18 term "self-insurer" shall include any employer or group of employers
19 permitted to pay compensation directly under the provisions of subdivi-
20 sion three, three-a or four of section fifty of this chapter;

21 (5) (A) The chair and the commissioner of taxation and finance are
22 authorized and directed to enter into a financing agreement with the
23 dormitory authority, to be known as the "special disability fund financ-
24 ing agreement." Such agreement shall set forth the process for calculat-
25 ing the annual debt service of the bonds issued by the dormitory author-
26 ity and any other associated costs. For purposes of this section,
27 "associated costs" may include a coverage factor, reserve fund require-
28 ments, all costs of any nature incurred by the dormitory authority in

29 connection with the special disability fund financing agreement or
30 pursuant thereto, the operating costs of the waiver agreement management
31 office, the costs of any independent audits undertaken under this
32 section, and any other costs for the implementation of this subparagraph
33 and the issuance of bonds by the dormitory authority, including interest
34 rate exchange payments, rebate payments, liquidity fees, credit provider
35 fees, fiduciary fees, remarketing, dealer, auction agent and related
36 fees and other similar bond-related expenses, unless otherwise funded.
37 By January first of each year, the dormitory authority shall provide to
38 the chair the calculation of the amount expected to be paid by the
39 dormitory authority in debt service and associated costs for purposes of
40 calculating the debt service assessment as set forth in subparagraph
41 four of this paragraph. All monies received on account of any assessment
42 under subparagraph four of this paragraph and this subparagraph shall be
43 applied in accordance with this subparagraph and in accordance with the
44 financing agreement until the financial obligations of the dormitory
45 authority in respect to its contract with its bondholders are met and
46 all associated costs payable to the dormitory authority have been paid,
47 notwithstanding any other provision of law respecting secured trans-
48 actions. This provision may be included by the dormitory authority in
49 any contract of the dormitory authority with its bondholders.

50 The special disability fund financing agreement may restrict disburse-
51 ments, investments, or rebates, and may prescribe a system of accounts
52 applicable to the special disability fund, including custody of an
53 account with a trust indenture trustee that may be prescribed by the
54 dormitory authority as part of its contract with the bondholders. For
55 purposes of this paragraph, the term "bonds" shall include notes issued

1 in anticipation of the issuance of bonds, or notes issued pursuant to a
2 commercial paper program.

3 (B) The chair may conduct periodic audits of any self-insurer, insur-
4 ance carrier and the state insurance fund concerning any information or
5 payment required under this paragraph, including any information rele-
6 vant to the payment or calculation of any assessments. The self-insurer,
7 insurance carrier and the state insurance fund shall provide all neces-
8 sary documents and information in relation to an audit in a manner
9 prescribed by the chair. Upon the determination of the chair that a
10 self-insurer, insurance carrier or the state insurance fund has under-
11 paid an assessment as a result of its inaccurate reporting, the self-in-
12 surer, insurance carrier or the state insurance fund upon notice from
13 the chair, shall pay the full amount of the underpaid assessment, along
14 with interest at the rate of nine per cent per annum on the unpaid
15 assessment due not later than thirty days after such notice.

16 (6) The commissioner of taxation and finance is hereby authorized to
17 receive and credit to such special disability fund any sum or sums that
18 may at any time be contributed to the state by the United States of
19 America under any act of congress, or otherwise, to which the state may
20 be or become entitled by reason of any payments made out of such fund.

21 (7) The commissioner of taxation and finance shall be the custodian of
22 said fund and, unless otherwise provided for in the special disability
23 fund financing agreement, shall invest any surplus or reserve moneys
24 thereof in securities which constitute legal investments for savings
25 banks under the laws of this state and in interest bearing certificates
26 of deposit of a bank or trust company located and authorized to do busi-
27 ness in this state or of a national bank located in this state secured
28 by a pledge of direct obligations of the United States or of the state

29 of New York in an amount equal to the amount of such certificates of
30 deposit, and may sell any of the securities or certificates of deposit
31 in which such fund is invested if necessary for the proper adminis-
32 tration or in the best interest of such fund. Disbursements from such
33 fund as provided by this subdivision shall be made by the commissioner
34 of taxation and finance upon vouchers signed by the chair of the board
35 unless the financing agreement provides for some other means of author-
36 izing such disbursements that is no less protective of the fund.

37 The commissioner of taxation and finance, as custodian of such fund,
38 annually as soon as practicable after January first, shall furnish to
39 the chair of the workers' compensation board a statement of the fund,
40 setting forth the balance of moneys in the said fund as of the beginning
41 of the calendar year, the income of the fund, the summary of payments
42 out of the fund on account of reimbursements and other charges ordered
43 to be paid by the board, and all other charges against the fund, and
44 setting forth the balance of the fund remaining to its credit on Decem-
45 ber thirty-first. Such statement shall be open to public inspection in
46 the office of the secretary of the board. The chair, not less than
47 ninety days after the issuance of the dormitory authority's annual
48 audit, shall furnish to the temporary president of the senate and the
49 speaker of the assembly the following reports on the special disability
50 fund: a revenue and operating expense statement; a financing plan; a
51 report concerning the assets and liabilities; the number of waiver
52 agreements entered into by the waiver agreement management office; the
53 number of claimants remaining in the fund; the estimated current
54 unfunded liability of the fund with respect to such claims; and a debt
55 issuance report including but not limited to (i) pledged assessment
56 revenue and securitization coverage, (ii) debt service maturities, (iii)

1 interest rate exchange or similar agreements, and (iv) financing and
2 issuance costs.

3 The commissioner of taxation and finance may establish within the
4 special disability fund such accounts and sub-accounts as he or she
5 deems useful for the operation of the fund, or as necessary to segregate
6 moneys within the fund, subject to the provisions of the financing
7 agreement. The waiver agreement management office, as defined in section
8 thirty-two of this article, shall make application to the chair on a
9 quarterly basis for any administrative costs incurred by the office.

10 § 77. Subdivision 6 of section 14 of the workers' compensation law, as
11 added by chapter 416 of the laws of 1985, is amended to read as follows:

12 6. If the injured employee is concurrently engaged in more than one
13 employment at the time of injury, the employee's average weekly wages
14 shall be calculated upon the basis of wages earned from all concurrent
15 employments covered under this chapter. The employer in whose employment
16 the employee was injured shall be liable for the benefits that would
17 have been payable if the employee had had no other employment. Any addi-
18 tional benefits resulting from the increase in average weekly wages due
19 to the employee's concurrent employments shall be payable in the first
20 instance by the employer in whose employment the employee was injured
21 and shall be reimbursed by the special disability fund created under
22 subdivision eight of section fifteen of this article, but only if such
23 claim is presented in accordance with subparagraph two of paragraph (h)
24 of subdivision eight of section fifteen of this article. The employer
25 in whose employment the employee was injured shall be liable for all
26 medical costs.

27 § 78. The public authorities law is amended by adding a new section
28 1680-1 to read as follows:

29 § 1680-1. The special disability fund financing. 1. As used in this
30 section the following terms shall have the following meanings:

31 (a) "Ancillary bond facility" means any interest rate exchange or
32 similar agreement or any bond insurance policy, letter of credit or
33 other credit enhancement facility, liquidity facility, guaranteed
34 investment or reinvestment agreement, or other similar agreement,
35 arrangement or contract.

36 (b) "Benefited party" means any person, firm or corporation that
37 enters into an ancillary bond facility with the authority according to
38 the provisions of this section.

39 (c) "Bonds" means any bonds, notes, certificates of participation and
40 other evidence of indebtedness issued by the authority pursuant to
41 subdivision five of this section.

42 (d) "Bond owners or owners of bonds" means any registered owners of
43 bonds.

44 (e) "Chair" means the chair of the workers' compensation board.

45 (f) "Code" means the United States Internal Revenue Code of 1986, as
46 amended.

47 (g) "Costs of issuance" means any item of expense directly or indi-
48 rectly payable or reimbursable by the authority and related to the
49 authorization, sale, or issuance of bonds, including, but not limited
50 to, underwriting fees and fees and expenses of professional consultants
51 and fiduciaries.

52 (h) "Debt service" means actual debt service, comprised of principal,
53 interest and associated costs, as defined in subparagraph five of para-
54 graph (h) of subdivision eight of section fifteen of the workers'
55 compensation law.

1 (i) "Director of the budget" or "director" means the director of the
2 budget of the state of New York.

3 (j) "Financing agreement" means any agreement authorized pursuant to
4 subdivision four of this section between the chair and the commissioner
5 of taxation and finance, and the authority.

6 (k) "Financing costs" means all costs of issuance, capitalized inter-
7 est, capitalized operating expenses of the authority and, pursuant to
8 the financing agreement, the initial capitalized operating expenses of
9 the waiver agreement management office and debt service reserves, fees,
10 cost of any ancillary bond facility, and any other fees, discounts,
11 expenses and costs related to issuing, securing and marketing the bonds
12 including, without limitation, any net original issue discount.

13 (l) "Investment securities" means: (i) general obligations of, or
14 obligations guaranteed by, any state of the United States of America or
15 political subdivision thereof, or the District of Columbia or any agency
16 or instrumentality of any of them, receiving one of the three highest
17 long-term unsecured debt rating categories available for such securities
18 of at least one independent rating agency, or (ii) certificates of
19 deposit, savings accounts, time deposits or other obligations or
20 accounts of banks or trust companies in the state, secured, if the
21 authority shall so require, in such manner as the authority may so
22 determine, or (iii) obligations in which the comptroller is authorized
23 to invest pursuant to either section ninety-eight or ninety-eight-a of
24 the state finance law, or (iv) investments which the commissioner of
25 taxation and finance is permitted to make with surplus or reserve moneys
26 of the special disability fund under subparagraph seven of paragraph (h)
27 of subdivision eight of section fifteen of the workers' compensation
28 law.

29 (m) "Interest rate exchange or similar agreement" means a written
30 contract entered into in connection with the issuance of bonds or with
31 such bonds outstanding with a counterparty to provide for an exchange or
32 swap of payments based upon fixed and/or variable interest rates, and
33 shall be for exchanges in currency of the United States of America only.

34 (n) "Net proceeds" means the amount of proceeds remaining following
35 each sale of bonds which are not required by the authority for purposes
36 of this section to pay or provide for debt service or financing costs,
37 as provided in the financing agreement.

38 (o) "Operating expenses" means the reasonable or necessary operating
39 expenses of the authority for purposes of this section, including, with-
40 out limitation, the costs of: retention of auditors, preparation of
41 accounting and other reports, maintenance of the ratings on the bonds,
42 any operating expense reserve fund, insurance premiums, ancillary bond
43 facilities, rebate payments, annual meetings or other required activ-
44 ities of the authority, and professional consultants and fiduciaries.

45 (p) "Outstanding", when used with respect to bonds, shall exclude
46 bonds that shall have been paid in full at maturity, or shall have
47 otherwise been refunded, redeemed, defeased or discharged, or that may
48 be deemed not outstanding pursuant to agreements with the holders there-
49 of.

50 (q) "Pledged assessments revenues", "pledged revenues" or "pledged
51 assessments" means receipts of special disability fund assessments
52 imposed pursuant to subparagraph four of paragraph (h) of subdivision
53 eight of section fifteen of the workers' compensation law and pledged
54 for the payment of debt service on the bonds or amounts due pursuant to
55 an ancillary bond facility, including the right to receive same.

56 (r) "State" means the state of New York.

1 (s) "Special disability fund financing agreement" means an agreement
2 authorized and created pursuant to subparagraph five of paragraph (h) of
3 subdivision eight of section fifteen of the workers' compensation law,
4 as same by its terms and bond proceedings, may be amended.

5 (t) "Waiver agreement" means waiver agreements entered into pursuant
6 to section thirty-two of the workers' compensation law.

7 (u) "Waiver agreement management office" shall mean the office
8 described in paragraph (e) of section thirty-two of the workers' compen-
9 sation law.

10 2. The authority is hereby authorized to finance the special disabili-
11 ty fund established by paragraph (h) of subdivision eight of section
12 fifteen of the workers' compensation law and to enter into one or more
13 special disability fund financing agreements described in such subdivi-
14 sion. All of the provisions of the authority relating to bonds and notes
15 which are not inconsistent with the provisions of this section shall
16 apply to obligations authorized by this section, including but not
17 limited to the power to establish adequate reserves therefor and to
18 issue renewal notes or refunding bonds thereof. The provisions of this
19 section shall apply solely to obligations authorized by this section and
20 shall not include liabilities, assets or revenues other than liabil-
21 ities, assets or revenues derived from the authority solely from the
22 special disability fund.

23 3. It is found and declared that the special disability fund no longer
24 serves the purposes for which it was created, adds to the time and
25 expense of proceedings before the workers' compensation board and to
26 employers' costs for workers' compensation insurance; that the creation
27 and operation of a waiver agreement management office of the workers'
28 compensation board, to manage, maintain and negotiate waiver agreements

29 on behalf of the special disability fund can reduce the special disabil-
30 ity fund's unfunded liability; that the reduction of such liability and
31 the closing of the fund to new claims will over the long term reduce
32 assessments paid to the fund by insurance carriers, self-insurers and
33 the state insurance fund, as well as the employers to whom these costs
34 are passed on; that in the absence of this section the annual cost of
35 such assessments is expected to rise; that the settlement of claims and
36 other actions undertaken by the waiver agreement management office will
37 lower the administrative costs of insurance carriers, self-insurers and
38 the state insurance fund; that revenue obligations issued by the author-
39 ity and secured by a special assessment annually levied, imposed and
40 collected on and from insurance carriers, self-insurers and the state
41 insurance fund for the governmental purpose of funding waiver agreements
42 amortized over a substantial period would allow the state to settle and
43 otherwise manage claims as a means for reducing the fund's liabilities
44 and the assessments needed to pay them, thereby furthering the policy of
45 the state to reduce the costs of workers' compensation and to improve
46 the business climate in the state while compensating injured workers and
47 honoring the obligations of the special disability fund; that all costs
48 of the authority in relation to this section shall be paid from assess-
49 ments set forth in paragraph (h) of subdivision eight of section fifteen
50 of the workers' compensation law; and that, therefore, the provisions of
51 this section are for the public benefit and good and the authorization
52 as provided in this section of the issuance of revenue obligations of
53 the authority is declared to be for a public purpose and the exercise of
54 an essential governmental function.

55 4. (a) The authority, the commissioner of taxation and finance and the
56 chair, in consultation with the special disability fund advisory commit-

1 tee shall execute a financing agreement prior to the issuance of any
2 bonds. Such agreement shall contain such terms and conditions as are
3 necessary to carry out and effectuate the purposes of this section,
4 including covenants with respect to the assessment and enforcement of
5 the assessments, the application and use of the proceeds of the sale of
6 bonds to preserve the tax-exemption on the bonds, the interest on which
7 is intended to be exempt from taxation. The state shall not be author-
8 ized to make any covenant, pledge, promise or agreement purporting to
9 bind the state with respect to pledged revenues, except as otherwise
10 specifically authorized by this section.

11 (b) The net proceeds of the bonds shall be deposited in accordance
12 with the financing agreement and this section. The financing agreement
13 shall provide for the application of the net bond proceeds, and such
14 bond proceeds shall be used, for any of the following purposes: (i)
15 funding of waiver agreements, (ii) payment of financing costs, (iii)
16 funding anticipated liabilities of the special disability fund, (iv)
17 funding contract awards pursuant to subparagraph two of paragraph (h) of
18 section thirty-two of the workers' compensation law and (v) such other
19 purposes as are set forth in the financing agreement. Not inconsistent
20 with this section, the authority may provide restrictions on the use and
21 investment of net proceeds of the bonds and other amounts in the financ-
22 ing agreement or otherwise in a tax regulatory agreement as necessary or
23 desirable to assure that they are exempt from taxation.

24 5. (a) (i) The authority shall have power and is hereby authorized to
25 issue its bonds at such times and in an aggregate principal amount not
26 to exceed an amount to be determined by the superintendent of insurance
27 as necessary to address all or a portion of the incurred unfunded
28 liabilities of the special disability fund, but in no case exceeding

29 twenty-five percent of the unfunded liability of the special disability
30 fund as of a date no later than July first, two thousand seven, as
31 certified to the authority by a qualified third party. The bonds shall
32 be issued for the following corporate purposes: (A) funding of waiver
33 agreements, (B) payment of financing costs, (C) funding anticipated
34 liabilities of the special disability fund, (D) funding contract awards
35 pursuant to paragraph two of subdivision (h) of section thirty-two of
36 the workers' compensation law and (E) such other purposes as are set
37 forth in the financing agreement. The foregoing limitation on outstand-
38 ing aggregate principal shall not apply to prevent the issuance of bonds
39 to refund bonds.

40 (ii) Each issuance of bonds shall be authorized by a resolution of the
41 authority, provided, however, that any such resolution authorizing the
42 issuance of bonds may delegate to an officer of the authority the power
43 to issue such bonds from time to time and to fix the details of any such
44 issues of bonds by an appropriate certificate of such authorized offi-
45 cer. Every issue of the bonds of the authority for the special disabili-
46 ty fund shall be special revenue obligations payable from and secured by
47 a pledge of revenues and other assets, including those proceeds of such
48 bonds deposited in a reserve fund for the benefit of bondholders, earn-
49 ings on funds of the authority and such other funds and assets as may
50 become available, upon such terms and conditions as specified by the
51 authority in the resolution under which the bonds are issued or in a
52 related trust indenture.

53 (iii) The authority shall have the power and is hereby authorized from
54 time to time to issue bonds, in consultation with the special disability
55 fund advisory committee to refund any bonds issued under this section by
56 the issuance of new bonds, whether the bonds to be refunded have or have

1 not matured, and to issue bonds partly to refund bonds then outstanding
2 and partly for any of its other corporate purposes under this section.
3 The refunding bonds may be exchanged for the bonds to be refunded or
4 sold and the proceeds applied to the purchase, redemption or payment of
5 such bonds.

6 (b) The bonds of the authority of each issue shall be dated, shall
7 bear interest (which, in the opinion of bond counsel to the authority,
8 may be includable in or excludable from the gross income of the owners
9 for federal income tax purposes) at such fixed or variable rates, paya-
10 ble at or prior to maturity, and shall mature at such time or times, as
11 may be determined by the authority and may be made redeemable before
12 maturity, at the option of the authority, at such price or prices and
13 under such terms and conditions as may be fixed by the authority. The
14 principal and interest of such bonds may be made payable in any lawful
15 medium. The resolution or the certificate of the authorized officer
16 shall determine the form of the bonds, either registered or book-entry
17 form, and the manner of execution of the bonds and shall fix the denomi-
18 nation or denominations of the bonds and the place or places of payment
19 of principal and interest thereof, which may be at any bank or trust
20 company within or outside the state. If any officer whose signature or a
21 facsimile thereof appears on any bonds shall cease to be such officer
22 before the delivery of such bonds, such signature or facsimile shall
23 nevertheless be valid and sufficient for all purposes the same as if
24 such officer had remained in office until such delivery. The authority
25 may also provide for temporary bonds and for the replacement of any bond
26 that shall become mutilated or shall be destroyed or lost.

27 (c) The authority may sell such bonds in such manner, either at a
28 public or private sale and either on a competitive or negotiated basis,

29 provided no such bonds may be sold by the authority at private sale
30 unless such sale and the terms thereof have been approved in writing by
31 the comptroller of the state of New York. The proceeds of such bonds
32 shall be disbursed for the purposes for which such bonds were issued
33 under such restrictions as the financing agreement and the resolution
34 authorizing the issuance of such bonds or the related trust indenture
35 may provide. Such bonds shall be issued upon approval of the authority
36 and without any other approvals, filings, proceedings or the happening
37 of any other conditions or things other than the approvals, findings,
38 proceedings, conditions, and things that are specified and required by
39 this section. Provided, however, that any issuance of bonds under the
40 authority of this section shall be considered a project for the purposes
41 of section fifty-one of this chapter, and subject to approval under such
42 section.

43 (d) Any pledge made by the authority shall be valid and binding at the
44 time the pledge is made. The assets, property, revenues, reserves or
45 earnings so pledged shall immediately be subject to the lien of such
46 pledge without any physical delivery thereof or further act and the lien
47 of any such pledge shall be valid and binding as against all parties
48 having claims of any kind against the authority, irrespective of whether
49 such parties have notice thereof. Notwithstanding any other provision
50 of law to the contrary, neither the bond resolution nor any indenture or
51 other instrument, including the financing agreement, by which a pledge
52 is created or by which the authority's interest in pledged assets, prop-
53 erty, revenues, reserves or earnings thereon is assigned need be filed,
54 perfected or recorded in any public records in order to protect the
55 pledge thereof or perfect the lien thereof as against third parties,

1 except that a copy thereof shall be filed in the records of the authori-
2 ty.

3 (e) Whether or not the bonds of the authority are of such form and
4 character as to be negotiable instruments under the terms of the uniform
5 commercial code, the bonds are hereby made negotiable instruments for
6 all purposes, subject only to the provisions of the bonds for registra-
7 tion.

8 (f) At the sole discretion of the authority, any bonds issued by the
9 authority and any ancillary bond facility made under the provisions of
10 this subdivision may be secured by a resolution or trust indenture by
11 and between the authority and the trust indenture trustee, which may be
12 any trust company or bank having the powers of a trust company, whether
13 located within or outside the state, provided it is carried out in
14 accordance with section sixty-nine-d of the state finance law. Such
15 trust indenture or resolution providing for the issuance of such bonds
16 may provide for the creation and maintenance of such reserves as the
17 authority shall determine to be proper and may include covenants setting
18 forth the duties of the authority in relation to the bonds, the income
19 of the authority, or the financing agreement. Such trust indenture or
20 resolution may contain provisions: (i) respecting the custody, safe-
21 guarding and application of all moneys and securities; (ii) protecting
22 and enforcing the rights and remedies (pursuant to the trust indenture
23 and the financing agreement) of the owners of the bonds and any other
24 benefited party as may be reasonable and proper and not in violation of
25 law; (iii) concerning the rights, powers and duties of the trustee
26 appointed by bondholders pursuant to paragraph (g) of this subdivision;
27 or (iv) limiting or abrogating the right of the bondholders to appoint a
28 trustee. It shall be lawful for any bank or trust company which may act

29 as depository of the proceeds of bonds or of any other funds or obli-
30 gations received on behalf of the authority to furnish such indemnifying
31 bonds or to pledge such securities as may be required by the authority.
32 Any such trust indenture or resolution may contain such other provisions
33 as the authority may deem reasonable and proper for priorities and
34 subordination among the owners of the bonds and other beneficiaries. For
35 purposes of this section, a "resolution" of the authority shall include
36 any trust indenture authorized thereby.

37 (g) The authority may enter into, amend or terminate, as it determines
38 to be necessary or appropriate, any ancillary bond facility in consulta-
39 tion with the special disability fund advisory committee (i) to facili-
40 tate the issuance, sale, resale, purchase, repurchase or payment of
41 bonds, interest rate savings or market diversification or the making or
42 performance of interest rate exchange or similar agreements, including
43 without limitation bond insurance, letters of credit and liquidity
44 facilities, (ii) to attempt to manage or hedge risk or achieve a desira-
45 ble effective interest rate or cash flow, or (iii) to place the obli-
46 gations or investments of the authority, as represented by the bonds or
47 the investment of reserved bond proceeds or other pledged revenues or
48 other assets, in whole or in part, on the interest rate, cash flow or
49 other basis decided in consultation with the special disability fund
50 advisory committee, which facility may include without limitation
51 contracts commonly known as interest rate exchange or similar agree-
52 ments, forward purchase contracts or guaranteed investment contracts and
53 futures or contracts providing for payments based on levels of, or
54 changes in, interest rates. These contracts or arrangements may be
55 entered into by the authority in connection with, or incidental to,
56 entering into, or maintaining any (i) agreement which secures bonds of

1 the authority or (ii) investment, or contract providing for investment
2 of reserves or similar facility guaranteeing an investment rate for a
3 period of years not to exceed the underlying term of the bonds. The
4 determination by the authority that an ancillary bond facility or the
5 amendment or termination thereof is necessary or appropriate as afore-
6 said shall be conclusive. Any ancillary bond facility may contain such
7 payment, security, default, remedy, and termination provisions and
8 payments and other terms and conditions as determined by the authority,
9 after giving due consideration to the creditworthiness of the counter-
10 party or other obligated party, including any rating by any nationally
11 recognized rating agency, and any other criteria as may be appropriate.

12 (h) The authority, subject to such agreements with bondholders as may
13 then exist (including provisions which restrict the power of the author-
14 ity to purchase bonds), or with the providers of any applicable ancil-
15 lary bond facility, shall have the power out of any funds available
16 therefor to purchase bonds of the authority, which may or may not there-
17 upon be cancelled, at a price not substantially exceeding:

18 (i) if the bonds are then redeemable, the redemption price then appli-
19 cable, including any accrued interest; or

20 (ii) if the bonds are not then redeemable, the redemption price and
21 accrued interest applicable on the first date after such purchase upon
22 which the bonds become subject to redemption.

23 (i) Neither the members of the authority nor any other person execut-
24 ing the bonds or an ancillary bond facility of the authority shall be
25 subject to any personal liability by reason of the issuance or execution
26 and delivery thereof.

27 (j) The maturities of the bonds shall not exceed thirty years from
28 their respective issuance dates.

29 6. Neither any bond issued pursuant to this section nor any ancillary
30 bond facility of the authority shall constitute a debt or moral obli-
31 gation of the state or a state supported obligation within the meaning
32 of any constitutional or statutory provision or a pledge of the faith
33 and credit of the state or of the taxing power of the state, and the
34 state shall not be liable to make any payments thereon nor shall any
35 bond or any ancillary bond facility be payable out of any funds or
36 assets other than pledged revenues and other assets of the authority and
37 other funds and assets of or available to the authority pledged there-
38 for, and the bonds and any ancillary bond facility of the authority
39 shall contain on the face thereof or other prominent place thereon a
40 statement to the foregoing effect.

41 7. (a) Subject to the provisions of subdivision five of this section
42 in the event that the authority shall default in the payment of princi-
43 pal of, or interest on, or sinking fund payment on, any issue of bonds
44 after the same shall become due, whether at maturity or upon call for
45 redemption, or in the event that the authority or the state shall fail
46 to comply with any agreement made with the holders of any issue of
47 bonds, the holders of twenty-five percent in aggregate principal amount
48 of the bonds of such issue then outstanding, by instrument or instru-
49 ments filed in the office of the clerk of the county of Albany and
50 proved or acknowledged in the same manner as a deed to be recorded, may
51 appoint a trustee to represent the holders of such bonds for the
52 purposes herein provided.

53 (b) Such trustee, may, and upon written request of the holders of
54 twenty-five percent in principal amount of such bonds then outstanding
55 shall, in his or its own name:

1 (i) by suit, action or proceeding in accordance with the civil prac-
2 tice law and rules, enforce all rights of the bondholders, including the
3 right to require the authority to carry out any agreement with such
4 holders and to perform its duties under this section;

5 (ii) bring suit upon such bonds;

6 (iii) by action or suit, require the authority to account as if it
7 were the trustee of an express trust for the holders of such bonds;

8 (iv) by action or suit, enjoin any acts or things which may be unlaw-
9 ful or in violation of the rights of the holders of such bonds; and

10 (v) declare all such bonds due and payable, and if all defaults shall
11 be made good, then, with the consent of the holders of twenty-five
12 percent of the principal amount of such bonds then outstanding, annul
13 such declaration and its consequences, provided, however, that nothing
14 in this subdivision shall preclude the authority from agreeing that
15 consent of the provider of an ancillary bond facility is required for an
16 acceleration of related bonds in the event of a default other than a
17 failure to pay principal of or interest on the bonds when due.

18 (c) The supreme court shall have jurisdiction of any suit, action or
19 proceeding by the trustee on behalf of such bondholders. The venue of
20 any such suit, action or proceeding shall be laid in the county of Alba-
21 ny.

22 (d) Before declaring the principal of bonds due and payable, the trus-
23 tee shall first give thirty days notice in writing to the authority.

24 8. All monies of the authority from whatever source derived shall be
25 paid to the treasurer of the authority and shall be deposited forthwith
26 in a bank or banks designated by the authority. The monies in such
27 accounts shall be paid out or withdrawn on the order of such person or
28 persons as the authority may authorize to make such requisitions. All

29 deposits of such monies shall either be secured by obligations of the
30 United States or of the state or of any municipality of a market value
31 equal at all times to the amount on deposit, or monies of the authority
32 may be deposited in money market funds rated in the highest short-term
33 or long-term rating category by at least one nationally recognized
34 rating agency. To the extent practicable, and consistent with the
35 requirements of the authority, all such monies shall be deposited in
36 interest bearing accounts. The authority shall have power, notwithstand-
37 ing the provisions of this section, to contract with the holders of any
38 bonds as to the custody, collection, security, investment and payment of
39 any monies of the authority or any monies held in trust or otherwise for
40 the payment of bonds or any way to secure bonds, and carry out any such
41 contract notwithstanding that such contract may be inconsistent with the
42 provisions of this section. Monies held in trust or otherwise for the
43 payment of bonds or in any way to secure bonds and deposits of such
44 monies may be secured in the same manner as monies of the authority and
45 all banks and trust companies are authorized to give such security for
46 such deposits. Any monies of the authority not required for immediate
47 use or disbursement may, at the discretion of the authority, be invested
48 in accordance with law and such guidelines as are approved by the
49 authority.

50 9. (a) It is hereby determined that the carrying out by the authority
51 of its corporate purposes under this section are in all respects for the
52 benefit of the people of the state of New York and are public purposes.
53 Accordingly, the authority shall be regarded as performing an essential
54 governmental function in the exercise of the powers conferred upon it by
55 this section. The property of the authority, its income and its oper-
56 ations shall be exempt from taxation, assessments, special assessments

1 and ad valorem levies. The authority shall not be required to pay any
2 fees, taxes, special ad valorem levies or assessments of any kind,
3 whether state or local, including, but not limited to, real property
4 taxes, franchise taxes, sales taxes or other taxes, upon or with respect
5 to any property owned by it or under its jurisdiction, control or super-
6 vision, or upon the uses thereof, or upon or with respect to its activ-
7 ities or operations in furtherance of the powers conferred upon it by
8 this section, or upon or with respect to any assessments, rates, charg-
9 es, fees, revenues or other income received by the authority.

10 (b) Any bonds issued pursuant to this section, their transfer and the
11 income therefrom shall, at all times, be exempt from taxation except for
12 estate or gift taxes and taxes on transfers.

13 (c) The state hereby covenants with the purchasers and with all subse-
14 quent holders and transferees of bonds issued by the authority pursuant
15 to this section, in consideration of the acceptance of and payment for
16 the bonds, that the bonds of the authority issued pursuant to this
17 section and the income therefrom and all assessments, revenues, moneys,
18 and other property received by the authority and pledged to pay or to
19 secure the payment of such bonds shall at all times be exempt from taxa-
20 tion.

21 (d) In the case of any bonds of the authority, interest on which is
22 intended to be exempt from federal income tax, the authority shall
23 prescribe restrictions on the use of the proceeds thereof and related
24 matters only as are necessary or desirable to assure such exemption, and
25 the recipients of such proceeds shall be bound thereby to the extent
26 such restrictions shall be made applicable to them. Any such recipient,
27 including, but not limited to, the state, the state insurance fund, a
28 public benefit corporation, and a school district or municipality is

29 authorized to execute a tax regulatory agreement with the authority or
30 the state, as the case may be, and the execution of such an agreement
31 may be treated by the authority or the state as a condition to receiving
32 any such proceeds.

33 10. (a) The state, solely with respect to the resources of the special
34 disability fund and as set forth in the special disability fund financ-
35 ing agreement, covenants with the purchasers and all subsequent owners
36 and transferees of bonds issued by the authority pursuant to this
37 section in consideration of the acceptance of the payment of the bonds,
38 until the bonds, together with the interest thereon, with interest on
39 any unpaid installment of interest and all costs and expenses in
40 connection with any action or proceeding on behalf of the owners, are
41 fully met and discharged or unless expressly permitted or otherwise
42 authorized by the terms of each special disability fund financing agree-
43 ment and any contract made or entered into by the authority with or for
44 the benefit of such owners, (i) that in the event bonds of the authority
45 are sold as federally tax-exempt bonds, the state shall not take any
46 action or fail to take action that would result in the loss of such
47 federal tax exemption on said bonds, (ii) that the state will cause the
48 workers' compensation board to impose, charge, raise, levy, collect and
49 apply the pledged assessments and other revenues, receipts, funds or
50 moneys pledged for the payment of debt service requirements in each year
51 in which bonds are outstanding, and (iii) further, that the state (A)
52 will not materially limit or alter the duties imposed on the workers'
53 compensation board, the authority and other officers of the state by the
54 special disability fund financing agreement and the bond proceedings
55 authorizing the issuance of bonds with respect to application of pledged
56 assessments or other revenues, receipts, funds or moneys pledged for the

1 payment of debt service requirements, (B) will not issue any bonds,
2 notes or other evidences of indebtedness, other than the bonds, having
3 any rights arising out of paragraph (h) of subdivision eight of section
4 fifteen of the workers' compensation law or this section or secured by
5 any pledge of or other lien or charge on the pledged revenues or other
6 receipts, funds or moneys pledged for the payment of debt service
7 requirements, (C) will not create or cause to be created any lien or
8 charge on the pledged revenues, other than a lien or pledge created
9 thereon pursuant to said sections, (D) will carry out and perform, or
10 cause to be carried out and performed, each and every promise, covenant,
11 agreement or contract made or entered into by the special disability
12 fund financing agreement, by the authority or on its behalf with the
13 bond owners of any bonds, (E) will not in any way impair the rights,
14 exemptions or remedies of the bond owners, and (F) will not limit, modi-
15 fy, rescind, repeal or otherwise alter the rights or obligations of the
16 appropriate officers of the state to impose, maintain, charge or collect
17 the assessments and other revenues or receipts constituting the pledged
18 revenues as may be necessary to produce sufficient revenues to fulfill
19 the terms of the proceedings authorizing the issuance of the bonds,
20 including pledged revenue coverage requirements, provided, however, (i)
21 the remedies available to the authority and the bondholders for any
22 breach of the pledges and agreements of the state set forth in this
23 subclause shall be limited to injunctive relief, (ii) nothing in this
24 subdivision shall prevent the authority from issuing evidences of
25 indebtedness (A) which are secured by a pledge or lien which is, and
26 shall on the face thereof, be expressly subordinate and junior in all
27 respects to every lien and pledge created by or pursuant to said
28 sections, or (B) which are secured by a pledge of or lien on moneys or

29 funds derived on or after the date every pledge or lien thereon created
30 by or pursuant to said sections shall be discharged and satisfied, and
31 (iii) nothing in this subdivision shall preclude the state from exercis-
32 ing its power, through a change in law, to limit, modify, rescind,
33 repeal or otherwise alter the character of the pledged assessments or
34 revenues or to substitute like or different sources of assessments,
35 taxes, fees, charges or other receipts as pledged revenues if and when
36 adequate provision shall be made by law for the protection of the hold-
37 ers of outstanding bonds pursuant to the proceedings under which the
38 bonds are issued, including changing or altering the method of estab-
39 lishing the special assessments.

40 The authority is authorized to include this covenant of the state, as
41 a contract of the state, in any agreement with the owner of any bonds
42 issued pursuant to this section and in any credit facility or reimburse-
43 ment agreement with respect to such bonds. Notwithstanding these pledges
44 and agreements by the state, the attorney general may in his or her
45 discretion enforce any and all provisions related to the special disa-
46 bility fund, without limitation.

47 (b) Prior to the date which is one year and one day after the authori-
48 ty no longer has any bonds issued pursuant to this section outstanding,
49 the authority shall have no authority to file a voluntary petition under
50 chapter nine of the federal bankruptcy code or such corresponding chap-
51 ter or sections as may, from time to time, be in effect, and neither any
52 public officer nor any organization, entity or other person shall
53 authorize the authority to be or become a debtor under chapter nine or
54 any successor or corresponding chapter or sections during such period.

55 The state hereby covenants with the owners of the bonds of the authority
56 that the state will not limit or alter the denial of authority under

1 this subdivision during the period referred to in the preceding
2 sentence. The authority is authorized to include this covenant of the
3 state, as a contract of the state, in any agreement with the owner of
4 any bonds issued pursuant to this section.

5 (c) To the extent deemed appropriate by the authority any pledge and
6 agreement of the state with respect to the bonds as provided in this
7 section may be extended to, and included in, any ancillary bond facility
8 as a pledge and agreement of the state with the authority and the bene-
9 fited party.

10 11. The bonds of the authority are hereby made securities in which all
11 public officers and bodies of this state and all municipalities and
12 political subdivisions, all insurance companies and associations and
13 other persons carrying on an insurance business, all banks, bankers,
14 trust companies, savings banks and savings associations, including
15 savings and loan associations, building and loan associations, invest-
16 ment companies and other persons carrying on a banking business, all
17 administrators, guardians, executors, trustees and other fiduciaries,
18 and all other persons whatsoever who are now or may hereafter be author-
19 ized to invest in bonds or in other obligations of the state, may prop-
20 erly and legally invest funds, including capital, in their control or
21 belonging to them. The bonds are also hereby made securities which may
22 be deposited with and may be received by all public officers and bodies
23 of the state and all municipalities, political subdivisions and public
24 corporations for any purpose for which the deposit of bonds or other
25 obligations of the state is now or may hereafter be authorized.

26 12. (a) An action against the authority for death, personal injury or
27 property damage or founded on tort shall not be commenced more than one
28 year and ninety days after the cause of action thereof shall have

29 accrued nor unless a notice of claim shall have been served on a member
30 of the authority or officer or employee thereof designated by the
31 authority for such purpose, within the time limited by, and in compli-
32 ance with the requirements of section fifty-e of the general municipal
33 law.

34 (b) The venue of every action, suit or special proceeding brought
35 against the authority or concerning the validity of this section shall
36 be laid in the county of Albany.

37 (c) The bonds, and any obligation of the authority under any ancillary
38 bond facility, may contain a recital that they are issued or executed,
39 respectively, pursuant to this section, which recital shall be conclu-
40 sive evidence of the validity of the bonds and any such obligation,
41 respectively, and the regularity of the proceedings of the authority
42 relating thereto.

43 13. Any action or proceeding to which the authority or the people of
44 the state may be parties, in which any question arises as to the validi-
45 ty of this section, shall be preferred over all other civil causes of
46 action or cases, except election causes of action or cases, in all
47 courts of the state and shall be heard and determined in preference to
48 all other civil business pending therein, except election causes, irre-
49 spective of position on the calendar. The same preference shall be
50 granted upon application of the authority or its counsel in any action
51 or proceeding questioning the validity of this section in which the
52 authority may be allowed to intervene.

53 § 79. Subdivision 1 of section 17 of the public officers law is
54 amended by adding a new paragraph (t) to read as follows:

55 (t) For the purposes of this section, the term "employee" shall
56 include the members of the board, officers and employees of the dormito-

1 ry authority for purposes of section sixteen hundred eighty-1 of the
2 public authorities law.

3 § 80. The superintendent of insurance, in consultation with the chair
4 of the workers' compensation board, may promulgate regulations relating
5 to the standards to be followed in the approval of forms and in the
6 procedural requirements needed to implement the provisions of this act,
7 and the chair of the workers' compensation board, in consultation with
8 the superintendent of insurance, may promulgate regulations relating to
9 the procedural requirements needed to implement the provisions of this
10 act.

11 § 81. Severability. If any clause, sentence, paragraph, section or
12 part of this act shall be adjudged by any court of competent jurisdic-
13 tion to be invalid, such judgment shall not affect, impair or invalidate
14 the remainder thereof, but shall be confined in its operation to the
15 clause, sentence, paragraph, section or part thereof directly involved
16 in the controversy in which said judgment shall have been rendered.

17 § 82. This act shall take effect immediately; provided that:

18 a. section four of this act shall apply to accidents and dates of
19 disablement which occur on and after such effective date;

20 b. sections six and eight of this act shall take effect on the one
21 hundred eightieth day after this act shall have become a law;

22 c. sections seven, nine, thirteen, fifteen and seventy of this act
23 shall take effect on the thirtieth day after this act shall have become
24 a law, and shall apply to offenses committed on and after such date;

25 d. sections ten, thirty-five, forty and forty-one of this act shall
26 apply to claims or appeals filed after the effective date of this act;

27 e. sections eleven, twelve, twenty-five, twenty-six, twenty-seven,
28 twenty-eight, thirty-three, forty-three, forty-six, and sixty-six of

29 this act shall take effect on the one hundred twentieth day after this
30 act shall have become a law;

31 f. section thirty-four of this act shall apply to appeals filed after
32 the effective date of this act;

33 g. sections fifty-six and sixty-five of this act shall take effect
34 January 1, 2008; and

35 h. section sixty-eight of this act shall take effect February 1, 2008;
36 provided, however that the amendments made to section 2316 of the insur-
37 ance law made by such section shall not effect the expiration of such
38 section pursuant to section 2342 of the insurance law and shall be
39 deemed expired therewith.