

**NEW YORK STATE SENATE  
INTRODUCER'S MEMORANDUM IN SUPPORT  
submitted in accordance with Senate Rule VI. Sec 1**

**BILL NUMBER:** S8708

**SPONSOR:** RULES

**TITLE OF BILL:**

An act to amend the workers' compensation law, in relation to individual and group self-insurers and security for payment of compensation and a default offset fund, creates a task force on group self-insurance

**PURPOSE:**

This bill addresses the problems resulting from recent group self-insurer defaults. The bill: (1) strengthens regulation of group self-insurers; (2) provides short term funding to pay the immediate costs resulting from the defaults; and (3) creates a Task Force to identify potential changes to the group self-insurance program.

**SUMMARY OF PROVISIONS:**

Section 1 of the bill amends Workers' Compensation Law (WCL) § 50(3-a) to provide new regulatory authority and establish new standards for group self-insurers. These include requirements that (1) group self-insurers submit regular financial reports to the Workers' Compensation Board (WCB) and the WCB prepare evaluations of group self-insurers' financial and regulatory compliance; (2) underfunded group self-insurers submit a plan for becoming fully funded; (3) a financial monitor be appointed for group self-insurers that fail to present a plan; and (4) new members of group self-insurers submit a signed document to the WCB indicating that they understand the responsibilities of membership.

Section 1 also establishes licensing and bonding requirements for group administrators and new criminal penalties for misrepresentations. It permits the WCB to review contracts, requires the WCB to assess members of defaulted group self-insurers, and requires group self-insurers to disclose information about the group self-insurer in an annual report to members and the WCB. In addition, section 1 establishes a moratorium on new group self-insurers to last until April 1, 2009. Finally, this section restates the proposition that exists in present law that members of group self-insurers are jointly and severally liable for the liabilities of those group self-insurers.

Section 2 of the bill amends WCL § 50(3-b) to create civil penalties for licensed group representatives.

Section 3 of the bill amends WCL § 50(5) to create a new advisory committee for group self-insurers. This section adds language to renumbered WCL § 50(5)(g) to confirm that the provisions of both paragraph (f)'s (before the renumbering) of Workers' Compensation Law §50(5) apply to both individual and group self-insurers and operate to allow assessment for the payment of expenses arising out of the default of both individual self-insured employers and group self-insurers, including expenses required to make payments to injured workers.

This has always been the understanding of the Executive and Legislature, and this amendment is intended, inter alia, to clarify the law on this point in light of the controversy that has recently arisen regarding the applicability of this section to group self-insurers and as it relates to the payment of claims expenses stemming from the defaults of group self-insurers. It is and has always been the legislative intent that such assessment be imposed against both individual and group self-insurers. Such assessment is used when necessary to pay the Board's expenses, including the workers' compensation benefits of employees of participants in group self insurers when such groups have defaulted or their default is anticipated.

Finally, this section adds language to clarify the Executive's and Legislature's intent that individual and group self-insurers that have ceased to self-insure are subject to the assessments provided in WCL § 50.

Section 4 of the bill amends the WCL to add new subdivisions § 50(10) and (11), which establish new penalties for individual and group self-insurers that fail to maintain an adequate security deposit or misstate payroll.

Section 5 of the bill creates WCL § 50-a to provide the Workers' Compensation Board with the ability to borrow from the Fund for Uninsured Employers up to \$52 million to pay claims or offset assessments against individual and group self-insurers arising out of defaults of group self-insurers. The bill provides for a repayment mechanism by assessing individual and group self-insurers.

Section 6 of the bill creates WCL § 50-b to establish the Task Force on Group Self-Insurance to examine the group self-insurance program and issue a report on recommendations for reform by February 1, 2009.

Section 7 of the bill amends WCL § 50-d to require certain fees and penalties be deposited into the fund for uninsured employers.

Section 8 of the bill amends WCL § 15(8) to clarify the assessment methodology under this section for employers who have ceased to self-insure.

Section 9 of the bill amends WCL § 134 to limit incentive programs available for self-insurers under this section to individual self insurers.

Section 10 of the bill amends WCL § 26-a to make the statutory provision governing the uninsured employers' fund consistent with the borrowing authority established in WCL § 50-b.

Section 11 of the bill amends WCL § 52 to raise the penalty for uninsured employers from \$1000 per ten days without coverage, to \$2000.

Section 12 of the bill amends WCL § 125-a to correct an error in the provision that makes it illegal to discriminate against injured veterans; the proposal clarifies it is illegal to "encourage" rather than "discourage" discrimination.

Section 13 of the bill amends Public Health Law § 2490 to revise the provisions for the oversight committee for occupational health clinics.

Section 14 of the bill creates Public Health Law § 2490-a to establish an Occupational Health Clinic Advisory Committee at each occupational health clinic

Section 15 of the bill increases funding for occupational health clinics for Fiscal Year 2009.

Section 16 of the bill amends WCL § 151 to clarify the assessment methodology under this section for employers who have ceased to self-insure.

Section 17 of the bill provides the effective date.

**EXISTING LAW:**

WCL § 50(3-a) allows for groups of employers to self-insure, and sets forth the rules governing such group self-insurance. WCL § 50(5)(c) and (f) allow the WCB to assess individual and group self-insurers to provide for administration of the self-insurance program and to provide the WCB with funds when necessary to pay claims when it determines it may need to do so because of the default of an individual or group self-insurer.

**STATEMENT IN SUPPORT:**

The Workers' Compensation Law allows employers to provide compensation by securing coverage from a private carrier or the State Insurance Fund, or by self-insuring individually or - in the case of employers who are too small to self-insure individually - in a group with other employers in similar fields. The members of a group self-insurer are jointly and severally liable for the liabilities of the group.

While group self-insurance has been an important part of the New York workers' compensation regime, in the past several years, the program has been beset by a number of defaults among group self-insurers which has required the WCB to take over the administration and payment of their claims, while seeking to collect from the members of those groups. These defaults have highlighted the need to reform the regulation of group self-insurers, and to address the immediate problem of paying claims of injured workers insured by those groups.

This legislation establishes more stringent requirements to insure that group self-insurers will be fully funded. It provides for: (1) regular reporting and review by outside actuaries; (2) review and approval by the Workers' Compensation Board of rating plans and agreements with actuaries and administrators working with group self-insurers; (3) licensing and bonding of group administrators and regulation of the form of compensation they receive; and (4) greater disclosure to group members and to the general public.

To address the immediate funding needs of the Board, the bill allows the WCB to borrow limited funds from the Fund for Uninsured Employers. This will allow the WCB to reduce assessments against individual and group self-insurers. The legislation states the Executive's and Legislature's intent that under present law, those assessments are imposed against both individual and group self insurers. It changes the basis for calculating such assessments - effective January 1, 2009 - from pure premium to indemnity. The statute also creates a Task Force to study how the group self-insurance program should be structured going forward.

Finally, the bill addresses several other important issues related to workers' compensation. It increases funding and oversight for occupational health clinics; clarifies the process for determining assessments on former individual and group self-insurers; and corrects an error in

the 2007 workers' compensation reform bill.

**BUDGET IMPLICATIONS:**

None.

**EFFECTIVE DATE:**

This bill takes effect immediately, except that certain sections that require preparation by the WCB take effect 120 days from enactment, and new penalties and criminal offenses take effect 90 days from enactment and apply only to offenses after that date. The change in assessment methodology in WCL § 50 takes effect on January 1, 2009.

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# STATE OF NEW YORK

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## IN ASSEMBLY

June 23, 2008

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Introduced by COMMITTEE ON RULES -- (at request of M. of A. John, Morelle) -- (at request of the Governor) -- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to individual and group self-insurers and security for payment of compensation and a default offset fund, creates a task force on group self-insurance

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

1 Section 1. Subdivision 3-a of section 50 of the workers' compensation  
2 law, as amended by chapter 896 of the laws of 1966, paragraph 1 as  
3 amended by chapter 543 of the laws of 1984, paragraph 2 as amended by  
4 chapter 468 of the laws of 1988, paragraph 3 as amended by chapter 747  
5 of the laws of 1976, and paragraph 5 as amended by chapter 333 of the  
6 laws of 1986, is amended to read as follows:  
7 3-a. Group self-insurance. (1) Definitions. As used in this chapter  
8 the term "employers" shall include: (a) employers with related activity  
9 in a given industry which shall include municipal corporations as that  
10 term is defined in sections two and six-n of the general municipal law,  
11 employing persons who perform work in connection with the given indus-  
12 try, (b) an incorporated or unincorporated association or associations  
13 consisting exclusively of such employers provided they employ persons  
14 who perform such related work in the given industry, and (c) a combina-  
15 tion of employers as described in subparagraph (a) hereof and an associ-  
16 ation or associations of employers as described in subparagraph (b)  
17 hereof.  
18 (2) (a) Any group consisting exclusively of such employers may adopt a  
19 plan for self-insurance, as a group, for the payment of compensation  
20 under this chapter to their employees, except that no new groups may  
21 adopt such a plan prior to April first, two thousand nine. Under such  
22 plan the group shall assume the liability of all the employers within  
23 the group and pay all compensation for which the said employers are  
24 liable under this chapter, except that in the case of municipal corpo-  
25 rations as herein defined no proof of financial ability or deposit of  
26 securities or cash need be made in compliance with this subdivision.

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

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1 The group qualifying under this subdivision shall be known as a group  
2 self-insurer and the employers participating therein and covered thereby  
3 shall be known as members.

4 (b) Where such plan is adopted the group self-insurer shall furnish  
5 satisfactory proof to the [~~chairman~~] chair of its financial ability to  
6 pay such compensation for the [~~employers~~] members in the industry  
7 covered by it, its revenues, their source and assurance of continuance.  
8 The [~~chairman~~] chair shall require the deposit with the [~~chairman~~] chair  
9 of such securities as may be deemed necessary of the kind prescribed in  
10 subdivisions one, two, three, four and five, and [~~paragraph a~~] subpara-  
11 graph (a) of paragraph three of subdivision seven of section two hundred  
12 thirty-five of the banking law or the deposit of cash or the filing of  
13 irrevocable letters of credit issued by a qualified banking institution  
14 as defined by rules promulgated by the [~~chairman~~] chair or the filing of  
15 a bond of a surety company authorized to transact business in this  
16 state, in an amount to be determined to secure its liability to pay the  
17 compensation of each employer as above provided [~~in accordance with the~~  
18 ~~provisions of paragraph d of subdivision five of this section~~]. Such  
19 surety bond must be approved as to form by the [~~chairman~~] chair. The  
20 chair shall require each group self-insurer to provide regular reports  
21 no less than annually, which shall include but not be limited to audited  
22 financial statements, actuarial opinions and payroll information  
23 containing proof that it is fully funded. Such reports shall also  
24 include a contribution year analysis detailing contributions and  
25 expenses associated with each specific contribution year. For purposes  
26 of this paragraph, proof that a group self-insurer is fully funded shall  
27 at a minimum include proof of unrestricted cash and investments permit-  
28 ted by regulation of the chair of at least one hundred percent of the  
29 total liabilities, including the estimate presented in the actuarial  
30 opinion submitted by the group self-insurer in accordance with this  
31 chapter. The chair by regulation, may set further financial standards  
32 for group self-insurers. Any group self-insurer that fails to show that  
33 it is fully funded shall be deemed underfunded, and must submit a plan  
34 for achieving fully funded status which may include a deficit assessment  
35 on members of such group self-insurer which shall be subject to approval  
36 or modification by the chair. The chair may impose such limitations on  
37 admission of new members or offering of discounts on underfunded group  
38 self-insurers to insure that such group self-insurers shall become fully  
39 funded. Should the group self-insurer fail to meet the terms of its  
40 plan, the chair may condition its continued authorization to act as a  
41 group self-insurer on the appointment of an outside monitor selected by  
42 the chair, at the group self-insurer's expense. Effective January first,  
43 two thousand fourteen, any group self-insurer that fails to show it is  
44 fully funded in accordance with this paragraph and the regulations  
45 issued pursuant thereto shall have one year to cure the deficiency. If  
46 such deficiency is not cured within one year, the group self-insurer  
47 shall be given six months to terminate its coverage.

48 (c) The chair shall evaluate, no less than once every three years, a  
49 group self-insurer's compliance with the financial and regulatory  
50 requirements for self-insurance. The chair may engage any qualified  
51 person or organization to assist with such evaluation and any costs  
52 incurred by the chair shall be borne by the group self-insurer under  
53 examination. Failure to submit to such independent review or to pay such  
54 costs, upon demand of the chair, shall be sufficient grounds to termi-  
55 nate coverage of the group self-insurer.

1 (d) The chair may require reports to be prepared by an auditor, actu-  
2 ary or other consultant, selected by the board or, at the chair's  
3 discretion, by the group self-insurer from a list which shall be pre-ap-  
4 proved by the chair to determine whether the group self-insurer meets  
5 the financial criteria for self-insurance. All actuaries so selected  
6 shall be fellows or associates of the casualty actuarial society.

7 (e) The [chairman] chair may also require that any and all agreements,  
8 contracts and other pertinent documents relating to the organization of  
9 the [employers] members in the group self-insurer shall be filed [with  
10 him] at the time the application for group self-insurance is made or  
11 anytime thereafter. Such application shall be on a form prescribed by  
12 the [chairman] chair. The [chairman] chair may also require an agree-  
13 ment on the part of said group self-insurer to pay any awards commuted  
14 under section twenty-seven of this chapter into the aggregate trust fund  
15 as a condition of its being allowed to operate as a group self-insurer  
16 pursuant to this subdivision.

17 (f) The [chairman] chair shall have the authority to deny the applica-  
18 tion of the group self-insurer to pay such compensation or to revoke  
19 [his] consent furnished under this section at any time for good cause  
20 shown. [~~The group qualifying under this subdivision shall be known as a~~  
21 ~~self-insurer.~~]

22 (g) At least twenty days prior to the requested effective date of the  
23 participating agreement, a group self-insurer shall notify the chair on  
24 a prescribed form of a new group self-insurer member and file (1) a  
25 member application and (2) a copy of the properly executed prescribed  
26 participation agreement wherein the member acknowledges their joint and  
27 several obligation for their period of membership. The board shall, on a  
28 form promulgated by the chair, provide notice of the member's rights and  
29 responsibilities as a group self-insurer member, including the member's  
30 assumption of joint and several liability, and require the member to  
31 return a signed copy to the chair as a condition of membership. Such  
32 membership shall not become effective until the signed copy has been  
33 received by the board.

34 (h) Any member terminating membership in a group self-insurer after  
35 less than four years in such group self-insurer, and any member in a  
36 group self-insurer that has defaulted, shall be precluded from obtaining  
37 prospective coverage from any group self-insurer for a period of at  
38 least three years from the effective date of termination.

39 (3) [~~An employer participating~~] A member's participation in a group  
40 [self-insurance] self-insurer shall not [be relieved from the] relieve  
41 it of its liability for compensation prescribed by this chapter except  
42 by the payment thereof by the group self-insurer or by [himself] itself.  
43 Each member shall be responsible, jointly and severally, for all liabil-  
44 ities of the group self-insurer provided for by this chapter occurring  
45 during its respective period of membership, and such liability shall  
46 attach to any recipient of a conveyance of assets made in violation of  
47 section two hundred seventy-three of the debtor and creditor law. As  
48 between the employee and the group self-insurer, notice to or knowledge  
49 of the occurrence of the injury on the part of the [employer] member  
50 shall be deemed notice or knowledge, as the case may be, on the part of  
51 the group self-insurer; jurisdiction of the [employer] member shall, for  
52 the purpose of this chapter, be jurisdiction of the group self-insurer  
53 and such group self-insurer shall in all things be bound by and subject  
54 to the orders, findings, decisions or awards rendered against the  
55 participating [employer] member for the payment of compensation under  
56 the provisions of this chapter. The insolvency or bankruptcy of a

1 participating [~~employer~~] member shall not relieve the group self-insurer  
2 from the payment of compensation for injuries or death sustained by an  
3 employee during the time the [~~employer~~] member was a participant in such  
4 group [~~self-insurance~~] self-insurer. [~~The group self-insurer shall~~  
5 ~~promptly notify the chairman, on a prescribed form, of the addition of~~  
6 ~~any participating employer or employers.~~] Notice of termination of a  
7 participating [~~employer~~] member shall not be effective until at least  
8 ten days after notice of such termination, on a prescribed form, has  
9 been either filed in the office of the [~~chairman~~] chair or sent by  
10 certified or registered letter, return receipt requested, and also  
11 served in like manner upon the [~~employer~~] member. In the event such  
12 termination is due to a member's failure to pay required contributions,  
13 such member's termination shall not be rescinded more than three times.

14 (4) Each group self-insurer, in its application for self-insurance,  
15 shall set forth the names and addresses of each of its officers, direc-  
16 tors, trustees, third party administrator and [~~general-manager~~] group  
17 administrator. Notice of any change in the officers, directors, trus-  
18 tees, third party administrator or [~~general-manager~~] group administrator  
19 shall be given to the [~~chairman~~] chair within ten days thereof. No offi-  
20 cer, director, trustee [~~or~~], employee, third party administrator or  
21 group administrator of the group self-insurer may represent or partic-  
22 ipate directly or indirectly on behalf of an injured worker or his  
23 dependents in any [~~workmen's~~] workers' compensation proceeding. All  
24 employees of [~~employers~~] members participating in group self-insurance  
25 shall be and are deemed to be included under the group self-insurance  
26 plan.

27 (5) (a) Each group self-insurer shall secure the services of a group  
28 administrator to be responsible for assisting the group self-insurer in  
29 complying with the provisions of this section and the rules and regu-  
30 lations promulgated hereunder, and for coordinating services including  
31 but not limited to claims processing, loss control, legal, accounting  
32 and actuarial services. No person, firm or corporation shall coordinate  
33 such services or otherwise carry out the tasks of a group administrator  
34 as provided in this subdivision or in the regulations issued pursuant  
35 thereto on behalf of a group self-insurer unless such person shall have  
36 obtained from the chair a license authorizing it to act as a group self-  
37 insurer administrator, which license may be revoked for good cause. The  
38 chair shall promulgate regulations setting forth any additional quali-  
39 fications for such license, governing the conduct and compensation of  
40 group self-insurer administrators, and setting a license fee in an  
41 amount not less than five thousand dollars per year for such license for  
42 each group self-insurer the administrator administers. Each administra-  
43 tor shall post a bond in the amount of five hundred thousand dollars for  
44 each group self-insurer administered or such other amount as may be set  
45 by the chair based on the cost and availability of such bond, from which  
46 the chair may recover any recoveries or penalties against the adminis-  
47 trator under this section. Nothing in this section shall relieve the  
48 trustees of a group self-insurer of any fiduciary obligation they hold  
49 to the other members of such group self-insurer.

50 (b) A group administrator that knowingly and with intent to mislead  
51 makes a material misrepresentation of a material fact in soliciting  
52 members in a group self-insurer shall be guilty of a class E felony.  
53 Additionally, the chair may impose a civil penalty of up to ten thousand  
54 dollars for each such violation.

55 (c) A group administrator, actuary or accountant that knowingly makes  
56 a material misrepresentation of a material fact concerning the financial

1 status of any group self-insurer to the chair or board, or in its annual  
2 report to members of the group self-insurer, shall be guilty of a class  
3 E felony. The chair may impose a civil penalty of up to twenty thousand  
4 dollars for each such violation. A second and subsequent violation of  
5 this paragraph shall be a class D felony. The chair may recover in a  
6 civil action any damages resulting from such misrepresentations, includ-  
7 ing the value of any amount assessed against any entities that are not  
8 members of the defaulted self-insurer that resulted from any such  
9 misrepresentation.

10 (d) (1) A group administrator shall provide an annual written report  
11 to all members of the group self-insurer and to the board which shall  
12 include:

13 a. the members of the group self-insurer;

14 b. the group administrator and trustees;

15 c. the results of the most recent financial audit;

16 d. the percentage of total liabilities held by the self-insurer in  
17 unrestricted cash and investments permitted by regulation as determined  
18 in accordance with subparagraph (b) of paragraph two of this subdivi-  
19 sion;

20 e. the number and amount of rate deviations provided to members during  
21 the prior year and whether the recipient of any such deviation was a  
22 trustee; and

23 f. such other information as the chair may direct.

24 The group administrator shall provide a copy of the most recent finan-  
25 cial audit to any group self-insurer member upon written request.

26 (2) The chair shall make available to the public, on its website and  
27 in writing upon request:

28 a. the identity of all group self-insurers that have provided workers'  
29 compensation under this subdivision in the prior three years;

30 b. the group administrator of each such group self-insurer;

31 c. the financial condition of all group self-insurers as determined  
32 by the board in the last financial audit and the board's regulatory  
33 definition of assets; and

34 d. such other information as the chair may direct, but which shall  
35 not include any confidential or proprietary information.

36 The board may direct the disclosure of any non-proprietary information  
37 regarding any group self-insurer, including whether a member is a member  
38 thereof, to any claimant upon a showing of need.

39 (e) (1) The chair may condition the issuance or continuation of a  
40 license under this subdivision upon the presentation by a group adminis-  
41 trator of such information as the board requests, at any time chosen by  
42 the chair or at regular intervals, including but not limited to the  
43 annual financial statements of the group administrator detailing the  
44 compensation the administrator and its substantially owned affiliated  
45 entities, as defined in section two of this chapter, have received or  
46 shall receive from the group self-insurer or its members, and the method  
47 by which such compensation has been or will be calculated. The chair may  
48 issue regulations governing the method of calculating compensation which  
49 a group administrator may receive, including restrictions on the process  
50 by which such compensation may be set.

51 (2) The chair may revoke the license of any group administrator that  
52 receives compensation in violation of such regulations, and may impose a  
53 penalty of up to two times any compensation so received.

54 (f) (1) No officer or director of, or person holding five percent or  
55 more ownership interest in, a group administrator shall within two years  
56 of serving in such capacity or holding such ownership interest, serve in

1 any capacity or hold any ownership interest in a workers' compensation  
2 carrier that provides or solicits the provision of compensation under  
3 this title for any employer that is or was a member of such group self-  
4 insurer. No officer or director of, or person holding five percent or  
5 more ownership interest in a group administrator shall serve in such  
6 capacity or hold such ownership interest in a carrier that provides or  
7 solicits excess coverage for any group self-insurer administered by such  
8 administrator.

9 (2) The chair may impose a civil penalty of up to ten thousand dollars  
10 for each violation of this paragraph.

11 (g) Each group self-insurer shall submit to the chair copies of any  
12 agreement or contract with an entity that serves or will serve as its  
13 group administrator, accountant, actuary or third party administrator at  
14 least thirty days prior to becoming effective, and the effectiveness of  
15 such contract shall be conditioned on the absence of an objection by the  
16 board during the thirty day period. Contracts that shall be subject to  
17 such objection shall include any contract in violation of regulation;  
18 and any contract that does not provide reasonable cancellation or  
19 renewal terms, including any contract that requires an affirmative act  
20 by the trustees of the group self-insurer to prevent automatic renewal,  
21 or that does not permit cancellation for negligence, violation of law,  
22 or other good cause.

23 (6) (a) Group self-insurers must file with the board, as soon as prac-  
24 ticable but no later than sixty days prior to the start of the fund year  
25 a rating plan which is supported by an actuarial rate study prepared by  
26 an independent, qualified actuary that is a fellow or associate of the  
27 casualty actuarial society, that clearly identifies the actuary's indi-  
28 cated rate assumptions therein. The rating plan must apply consistently  
29 to all members, and must provide for a common renewal date for all group  
30 self-insurer members. The rates filed can be adjusted based on an expe-  
31 rience modification calculated for every member in accordance with the  
32 experience rating plan promulgated by the workers' compensation rating  
33 board. Experience modification formulas must be applied identically to  
34 all members. Other rate deviations may be permissible provided a plan  
35 has been approved by the board. Such deviations shall not be in excess  
36 of ten percent of the actuary's indicated rate unless otherwise approved  
37 by the board for a fully funded group self-insurer, and shall in no  
38 event result in amounts less than the actuary's overall indicated rate.  
39 The chair by regulation may set further rate plan and actuarial report-  
40 ing standards.

41 (b) If the chair has cause to believe that a group self-insurer's  
42 contribution rates including experience modifications do not conform to  
43 the requirements of this part then he or she may require the submission  
44 of a report identifying the contributions paid by each of the members  
45 for the preceding year, the projected contributions for each group self-  
46 insurer member for the current fiscal year, and the manner in which such  
47 contributions were calculated. If, after review by the chair, the group  
48 self-insurer's contribution rates are deemed to be detrimental to its  
49 solvency, the chair may mandate that the group self-insurer modify such  
50 rates as the chair directs. The chair may impose a penalty of up to five  
51 thousand dollars for each violation of this subparagraph. A group self-  
52 insurer's failure to adhere to the rating structure determined by the  
53 board shall constitute good cause for termination.

54 (7) (a) If for any reason, the status of a group self-insurer under  
55 this subdivision is terminated, the securities or cash or the surety  
56 bond on deposit referred to herein shall remain in the custody of the

1 [~~chairman~~] chair for a period of at least twenty-six months. At the  
2 expiration of such time or such further period as the [~~chairman~~] chair  
3 may deem proper and warranted, he or she may accept in lieu thereof, and  
4 for the additional purpose of securing such further and future contin-  
5 gent liability as may arise from prior injuries to workers and be  
6 incurred by reason of any change in the condition of such workers  
7 warranting the board making subsequent awards for payment of additional  
8 compensation, a policy of insurance furnished by the group self-insurer,  
9 its successor or assigns or others carrying on or liquidating such  
10 [~~self-insurance~~] group self-insurer. Such policy shall be in a form  
11 approved by the superintendent of insurance and issued by the state fund  
12 or any insurance company licensed to issue this class of insurance in  
13 this state. It shall only be issued for a single complete premium  
14 payment in advance by the group self-insurer. It shall be given in an  
15 amount to be determined by the [~~chairman~~] chair and when issued shall be  
16 noncancellable for any cause during the continuance of the liability  
17 secured and so covered.

18 (b) The chair shall levy an assessment on the members of a defaulted  
19 group self-insurer within one hundred twenty days of such default or of  
20 the effective date of the chapter of the laws of two thousand eight  
21 which amended this subdivision, whichever is later, and against the  
22 members of any other terminated group self-insurer when necessary, for  
23 such an amount as he or she determines to be necessary to discharge all  
24 liabilities of the group self-insurer, including the reasonable cost of  
25 liquidation such as claims administration costs, actuarial and account-  
26 ing services, and the value of future assessments on members of such  
27 group self-insurer. The chair may impose subsequent deficit assessments,  
28 or return funds to members, to adjust the moneys collected to reflect  
29 the time of participation, and percent of group self-insurer liabilities  
30 for such time. Notwithstanding any such action by the chair, each  
31 member of the group self-insurer shall remain jointly and severally  
32 responsible for all liabilities provided by this chapter including but  
33 not limited to outstanding and estimated future liabilities and assess-  
34 ments. Nothing in this paragraph shall prevent the chair from offering  
35 payment plans or settling claims against members of any group self-in-  
36 surer as necessary to facilitate collection.

37 [~~(6)~~] (8) All the provisions of this chapter relating to self-insu-  
38 rance and the rules and regulations promulgated thereunder shall be  
39 deemed applicable to group self-insurance. The [~~chairman~~] chair shall  
40 implement the provisions of this subdivision by promulgating [~~reason-~~  
41 ~~able~~] rules and regulations but no such rules or regulations shall be  
42 necessary for any provision of this subdivision to be effective. The  
43 chair may impose a civil penalty of up to ten thousand dollars for each  
44 violation against any group self-insurer that violates any provision of  
45 this subdivision or of any regulation issued pursuant thereto for which  
46 a civil penalty is not specified.

47 (9) Except as provided in this paragraph, no group self-insurer shall  
48 add members that will result in a membership of more than five hundred  
49 members, unless additional membership is approved in writing by the  
50 chair on application by the group self-insurer. Such approval shall be  
51 conditioned upon a finding that the group self-insurer has sufficient  
52 assets to meet its liabilities, and that the addition of new members or  
53 of additional contributions will not render the group underfunded, as  
54 defined in subparagraph b of paragraph two of this subdivision. The  
55 chair may, in approving such application, establish such limits or  
56 conditions on future membership as necessary for group self-insurer

1 solvency, and request such information as is necessary to determine  
2 compliance with this subdivision. Any group self-insurer with more than  
3 five hundred members on the effective date of this paragraph shall not  
4 be required to reduce its membership, but shall not increase its member-  
5 ship beyond that in place on the effective date except by application  
6 made in accordance with this paragraph.

7 § 2. Paragraphs (a) and (b) of subdivision 3-b of section 50 of the  
8 workers' compensation law, paragraph (a) as separately amended by chap-  
9 ters 133 and 397 of the laws of 1982 and paragraph (b) as amended by  
10 chapter 307 of the laws of 1991, are amended to read as follows:

11 (a) Except as provided in subdivision three-d of this section, no  
12 person, firm or corporation, other than an attorney and counsellor-at-  
13 law, shall solicit the business of representing, or engage in represent-  
14 ing self-insurers or group self-insurers, as defined in [~~subdivision~~]  
15 subdivisions three and three-a of this section, before the board or any  
16 officer, agent or employee of the board assigned to conduct any hearing,  
17 investigation or inquiry relative to a claim for compensation or bene-  
18 fits under this chapter, unless he shall be a citizen of the United  
19 States or an alien lawfully admitted for permanent residence in the  
20 United States, or a corporation organized under the laws of the state of  
21 New York, and shall have obtained from the board a license authorizing  
22 him to appear in matters or proceedings before the board. Such license  
23 shall be issued by the board in accordance with the rules established by  
24 it. Any person, firm or corporation violating the aforesaid provisions  
25 shall be guilty of a misdemeanor. The chair may impose a civil penalty  
26 of up to one thousand dollars for each violation against any represen-  
27 tative licensed in accordance with this section that violates any  
28 provision of this section or of any regulation issued pursuant thereto,  
29 in addition to any other sanctions provided for under this chapter.

30 (b) The board, in its rules, may provide for the issuance of licenses  
31 to persons, firms or corporations, upon such proof of character and  
32 fitness as it may deem necessary, and may provide for a license fee in  
33 an amount not exceeding one hundred dollars a year, and an annual  
34 authorization fee in an amount not exceeding [~~one~~] five hundred dollars  
35 a year for each designated representative, and for the giving of a bond  
36 running to the people of the state of New York, conditioned upon the  
37 faithful performance of all duties required of such person, firm or  
38 corporation, and in an amount to be fixed by the board in its rules.  
39 Such bond shall be approved by the board as to form and sufficiency and  
40 shall be filed with it. All license and authorization fees collected  
41 under the provisions of this section shall be paid into the state treas-  
42 ury.

43 § 3. Subdivision 5 of section 50 of the workers' compensation law, as  
44 added by chapter 173 of the laws of 1960, the first sentence as amended  
45 by chapter 896 of the laws of 1966, paragraph c as amended by chapter 6  
46 of the laws of 2007, paragraph d as amended by chapter 468 of the laws  
47 of 1988, paragraph e as amended by chapter 285 of the laws of 1991 and  
48 paragraph f as separately amended by chapters 467 and 468 of the laws of  
49 1988, is amended to read as follows:

50 5. Self-insurance. "Self-insurance," as used herein, shall be deemed  
51 to be the system of securing compensation as provided in subdivisions  
52 three, three-a and four of this section, and article five of this chap-  
53 ter.

54 a. The [~~chairman~~] chair shall administer all matters relating to self-  
55 insurance under this chapter. [~~The chairman shall assign each self-in-~~  
56 ~~surer, qualified under this section, or article five of this chapter, to~~

1 ~~one of the following groups: (1) manufacturing and trade, including~~  
2 ~~mining and quarrying; (2) transportation, public utilities and~~  
3 ~~construction; (3) political subdivision; (4) miscellaneous.] All penal-  
4 ties set forth in subdivisions three and three-a of this section shall  
5 be paid into the fund for uninsured employers provided for in section  
6 twenty-six-a of this chapter.~~

7 b. Advisory committee for individual self-insurance. (1) To advise the  
8 [~~chairman~~] chair, there shall be an advisory committee for individual  
9 self-insurance, which shall be called the advisory committee for self-  
10 insurance and consist of [~~seven~~] the chair and ten additional members  
11 appointed by the [~~chairman~~] chair. Three of such members shall be named  
12 from the manufacturing and trade group of self-insurance, three from the  
13 transportation, public utilities and construction group, and one member  
14 shall be a self-insurer selected at large by the chairman, who shall be  
15 vice-chairman of the advisory committee. The [~~chairman~~] chair shall be  
16 [~~an additional member of the advisory committee and act as chairman~~  
17 ~~thereof~~] chair of the advisory committee; the secretary of the board  
18 shall act as secretary of the advisory committee. Any member appointed  
19 to such advisory committee shall be a self-insurer or an officer of a  
20 self-insurer or a person who on account of his or her employment or  
21 affiliation can be classed as a management representative of a self-in-  
22 surer. The members of the advisory committee for self-insurance in  
23 office at the time this subdivision takes effect, shall be and they are  
24 hereby continued in office as such for the remainder of the terms for  
25 which they were appointed respectively[~~, of which, three terms expire on~~  
26 ~~June thirtieth, nineteen hundred sixty; three terms expire on June thir-~~  
27 ~~tieth, nineteen hundred sixty-one and one term expires on June thirti-~~  
28 ~~eth, nineteen hundred sixty-two~~].

29 The members of the advisory committee for self-insurance next  
30 appointed, except to fill a vacancy created otherwise than by expiration  
31 of term, shall be appointed for terms of three years, except that of the  
32 three additional members to be appointed after May first, two thousand  
33 eight, one such member shall be appointed for an initial term of one  
34 year, one such member shall be appointed for an initial term of two  
35 years, and one such member shall be appointed for an initial term of  
36 three years. No member shall be appointed to the advisory committee for  
37 individual self-insurance if he or she has been convicted of a crime  
38 under this chapter or has been subject to criminal or civil penalties  
39 under this subdivision. Vacancies shall be filled for the unexpired term  
40 by appointment by the [~~chairman~~] chair. Members shall continue in office  
41 until their successors are appointed; in the event that no appointment  
42 is made within three months after a vacancy exists or after the expira-  
43 tion of the term of a member, the remaining members may fill the vacancy  
44 by a majority vote. If a member shall be absent from two consecutive  
45 regular meetings without adequate excuse his or her place may be  
46 declared vacant by the [~~chairman~~] chair. Members of such advisory  
47 committee shall serve without pay, but shall be entitled to their  
48 reasonable and necessary traveling and other expenses incurred in  
49 connection with their duties. Regular meetings of the advisory committee  
50 shall be held twice a year, [~~in the second and fourth quarter thereof,~~  
51 ~~respectively,~~] on dates to be fixed by the [~~chairman~~] chair. In addi-  
52 tion, special meetings shall be held if called by the [~~chairman~~] chair  
53 or any [~~three~~] five members of the committee. Such advisory committee  
54 shall have access to all self-insurance records except those restricted  
55 by the chair or those whose disclosure is restricted under section one  
56 hundred ten-a of this chapter, and shall have the power to require the

1 presence before it of any employee of the board or any self-insurer as  
2 reasonable and related to matters within the purview of the committee.  
3 Information obtained by members of the advisory committee shall be  
4 deemed confidential unless disclosed by order of the committee. It shall  
5 be the duty of the advisory committee to advise the [~~chairman~~] chair on  
6 all matters relating to self-insurance, particularly in respect to rules  
7 governing self-insurance, the deposit or withdrawal of securities, the  
8 standards for permitting employers to self-insure under this section,  
9 the appropriate amount of security or payments that self-insured employ-  
10 ers must provide, and on such other matters as the [~~chairman~~] chair  
11 shall request. The [~~chairman~~] chair shall detail to such advisory  
12 committee such stenographic or other assistance as may be necessary.  
13 Minutes shall be kept of the meetings of the advisory committee and  
14 shall be provided within forty-five days of such meeting to the governor  
15 and legislature, including the chairs of the assembly and senate commit-  
16 tees on insurance and labor.

17 (2) To advise the chair, there shall be an advisory committee for  
18 group self-insurance which shall be called the advisory committee for  
19 group self-insurance, which shall consist of the chair and ten addi-  
20 tional members appointed by the chair. The chair shall act as chair  
21 thereof; the secretary of the board shall act as secretary of the advi-  
22 sory committee. Any member appointed to such advisory committee shall be  
23 a group self-insurer or an officer, director or trustee of a group self-  
24 insurer, a group administrator or a person employed by a group adminis-  
25 trator, except that a majority of members shall be trustees or members  
26 of group self-insurers. The members of the advisory committee for group  
27 self-insurance shall be appointed for terms of three years, except that  
28 of the first ten members to be appointed, three such members shall be  
29 appointed for an initial term of one year, three such members shall be  
30 appointed for an initial term of two years, and four such members shall  
31 be appointed for an initial term of three years. No member shall be  
32 appointed to the advisory committee if he or she has been convicted of a  
33 crime under this chapter or has been subject to civil penalties under  
34 this subdivision. Vacancies shall be filled for the unexpired term by  
35 appointment by the chair. Members shall continue in office until their  
36 successors are appointed; in the event that no appointment is made with-  
37 in three months after a vacancy exists or after the expiration of the  
38 term of a member, the remaining members may fill the vacancy by a major-  
39 ity vote. If a member shall be absent from two consecutive regular meet-  
40 ings without adequate excuse his or her place may be declared vacant by  
41 the chair. Members of such advisory committee shall serve without pay,  
42 but shall be entitled to their reasonable and necessary traveling and  
43 other expenses incurred in connection with their duties. Regular meet-  
44 ings of the advisory committee shall be held twice a year on dates to be  
45 fixed by the chair. In addition, special meetings shall be held if  
46 called by the chair or any five members of the advisory committee. Such  
47 advisory committee shall have access to all group self-insurance records  
48 except those restricted by the chair or those whose disclosure is  
49 restricted under section one hundred ten-a of this chapter, and may  
50 request the presence before it of any employee of the board, any group  
51 self-insurer or any group administrator as reasonable and related to  
52 matters within the purview of the committee. Information obtained by  
53 members of the advisory committee shall be deemed confidential unless  
54 disclosed by order of the committee. It shall be the duty of the advi-  
55 sory committee to advise the chair on all matters relating to group  
56 self-insurance, particularly in respect to rules governing group self-

1 insurance, the deposit or withdrawal of securities, the standards for  
2 permitting employers to self-insure as members of a self-insured group  
3 under this section, the appropriate amount of security or payments that  
4 group self-insurers must provide, and on such other matters as the chair  
5 shall request. The chair shall detail to such advisory committee such  
6 stenographic or other assistance as may be necessary. Minutes shall be  
7 kept of the meetings of the advisory committee and shall be provided  
8 within forty-five days of such meeting to the governor and legislature,  
9 including the chairs of the assembly and senate committees on insurance  
10 and labor.

11 c. (1) The chair and the department of audit and control as soon as  
12 practicable after May first, nineteen hundred sixty, and annually there-  
13 after, as soon as practicable after April first in each succeeding year,  
14 shall ascertain the total amount of net expenses, including [~~in addition~~  
15 ~~to the direct costs of personal services,~~] (a) administrative expenses,  
16 which shall include the direct costs of personal services, the cost of  
17 maintenance and operation, the cost of retirement contributions made and  
18 workers' compensation premiums paid by the State for or on account of  
19 personnel, rentals for space occupied in state owned or state leased  
20 buildings, and (b) all direct or indirect costs incurred by the board  
21 during the preceding fiscal year in carrying out the provisions of  
22 subdivision three and three-a of this section. Such expenses shall be  
23 adjusted quarterly to reflect any change in circumstances, and shall be  
24 assessed against all private self-insured employers, including for this  
25 purpose active and terminated group self-insurers, active individual  
26 self-insured employers, and individual self-insured employers who have  
27 ceased to exercise the privilege of self-insurance.

28 (2) Such expenses shall be assessed against all self-insurers includ-  
29 ing for this purpose employers who have ceased to exercise the privilege  
30 of self-insurance. The basis of apportionment of the assessment against  
31 each self-insurer shall be a sum equal to that proportion of the amount  
32 which the [~~pure premium calculation~~] indemnity payment for each self-in-  
33 surer bore to the total [~~pure premium calculation~~] indemnity payments  
34 for all self-insurers for the calendar year which ended within the  
35 preceding state fiscal year. [~~For purposes of this section "pure premium~~  
36 ~~calculation" means the New York state annual payroll as of December~~  
37 ~~thirty-first of the preceding year by class code for each individually~~  
38 ~~self-insured employer or employer member of a group self-insurer multi-~~  
39 ~~plied by the applicable rate for each class code as determined by the~~  
40 ~~workers' compensation rating board in effect on December thirty-first of~~  
41 ~~the preceding year.~~] All such assessments when collected shall be depos-  
42 ited into a fund which shall be used to reimburse the appropriations  
43 theretofore made by the state for the payment of the expenses of admin-  
44 istering this chapter.

45 (3) Pure premium for assessments made prior to January first, two  
46 thousand nine against individual and group self-insurers who ceased to  
47 self-insure shall be based on payroll at the time the individual or  
48 group self-insurer has ceased to self-insure, reduced by a factor  
49 reflecting the reduction in the group or individual self-insurer's self-  
50 insurance liabilities since ceasing to self-insure.

51 d. [~~For the purposes only of subdivision three-a of this section~~  
52 ~~concerning group self-insurance plans, the amount of deposit of securi-~~  
53 ~~ties, irrevocable letters of credit or cash or the amount of a bond to~~  
54 ~~be filed pursuant to such subdivision shall be jointly determined by the~~  
55 ~~chairman and the superintendent of insurance.~~] The [~~chairman~~] chair may  
56 from time to time request the superintendent of insurance for [~~such~~

1 ~~other~~] assistance, and the superintendent of insurance is hereby author-  
2 ized to render such assistance upon request of the [~~chairman~~] chair, as  
3 may be necessary to insure the financial ability of such [~~groups~~] group  
4 self-insurers to pay [~~compensation for the employers in the industries~~  
5 ~~covered by such plans~~] all liabilities provided by this chapter.

6 e. Notwithstanding the provisions of paragraph c of this subdivision,  
7 the [~~chairman~~] chair shall require that partial payments for expenses of  
8 the fiscal year beginning April first, nineteen hundred eighty-three,  
9 and for each fiscal year thereafter shall be made on March tenth of the  
10 preceding fiscal year and on June tenth, September tenth, and December  
11 tenth of each year, or on such other dates as the director of the budget  
12 may prescribe, by each self-insurer. Provided, however, that the payment  
13 due March tenth, nineteen hundred eighty-three for the fiscal year  
14 beginning April first, nineteen hundred eighty-three shall not be  
15 required to be paid until June tenth, nineteen hundred eighty-three.  
16 Each such payment shall be a sum equal to twenty-five per centum of the  
17 annual expenses assessed upon each self-insurer, as estimated by the  
18 chair. The balance of assessments for the fiscal year beginning April  
19 first, nineteen hundred seventy-three and each fiscal year thereafter,  
20 shall be paid upon determination of the actual amount due in accordance  
21 with the provisions of paragraph c of this subdivision. Any overpayment  
22 of annual assessments resulting from the requirements of this paragraph  
23 shall be refunded or at the option of the chair shall be applied as a  
24 credit against the assessment of the succeeding fiscal year. The  
25 requirements of this subdivision shall not apply to those self-insurers  
26 whose estimated annual assessment for the fiscal year is less than one  
27 hundred dollars and such self-insurers shall make a single payment of  
28 the estimated annual assessment on or before September thirtieth of the  
29 fiscal year.

30 f. Whenever the [~~chairman~~] chair shall determine that the compensation  
31 and benefits provided by this chapter may be unpaid by reason of the  
32 default of an insolvent private self-insured employer, including a  
33 private group self-insurer, the [~~chairman~~] chair shall pay such compen-  
34 sation and benefits from administration expenses as provided in section  
35 one hundred fifty-one of this chapter upon audit and warrant of the  
36 comptroller upon vouchers approved by the [~~chairman~~] chair. Such  
37 payments shall be considered expenses of administration. The [~~chairman~~]  
38 chair shall be reimbursed therefor from the surety bond, cash or securi-  
39 ties held or, if such surety bond, securities or cash is insufficient,  
40 by the employer, its receiver, liquidator, rehabilitator or trustee in  
41 bankruptcy. All moneys reimbursed to the [~~chairman~~] chair or recovered  
42 by the [~~chairman~~] chair in an action or proceeding to secure such  
43 reimbursement shall forthwith be applied as a credit against the  
44 expenses on which the assessment levied upon all private self-insured  
45 employers, in accordance with paragraphs c and e of this subdivision, is  
46 calculated.

47 [~~f.~~] g. Whenever the [~~chairman~~] chair shall determine that the compen-  
48 sation and benefits provided by this chapter may be unpaid by reason of  
49 the default of an insolvent private self-insured employer [~~and the penal~~  
50 ~~sum of the surety bond and or the securities or irrevocable letters of~~  
51 ~~credit or cash held on its behalf by the chairman are about to become~~  
52 ~~exhausted,~~] , including a private group self-insurer, the [~~chairman~~]  
53 chair shall levy an assessment against all private self-insured employ-  
54 ers, including private group self-insurers, in accordance with para-  
55 graphs c and e of this subdivision to assure prompt payment of such  
56 compensation and benefits. Whenever compensation and benefits are unpaid

1 by reason of such default, the [~~chairman~~] chair shall promptly pay such  
2 compensation and benefits from administration expenses as provided in  
3 section one hundred fifty-one of this chapter upon audit and warrant of  
4 the comptroller upon vouchers approved by the [~~chairman~~] chair. Nothing  
5 in this paragraph shall preclude the chair from recovering the moneys it  
6 expends from its administrative expenses against the defaulted individ-  
7 ual self-insurer, or the members of the defaulted group self-insurer, as  
8 otherwise permitted by this chapter.

9 § 4. Section 50 of the workers' compensation law is amended by adding  
10 two new subdivisions 10 and 11 to read as follows:

11 10. An individual self-insured employer or group self-insurer who  
12 fails to file or maintain the security deposit required by the chair  
13 will be deemed to have failed to secure compensation for the amount not  
14 deposited, and shall be liable for all penalties for such failure  
15 provided for under this title.

16 11. If at any time an individual self-insured employer or member of a  
17 group self-insurer intentionally and materially understates or conceals  
18 payroll, or intentionally and materially misrepresents or conceals  
19 employee duties or if the employer intentionally or materially misstates  
20 payroll or claims information for the purposes of determining employer  
21 contributions as provided for under subdivisions three and three-a of  
22 this section, such employer shall be deemed to have failed to secure  
23 compensation and shall be subject to sanctions applicable under section  
24 fifty-two of this article in addition to any other sanctions available  
25 under law.

26 § 5. The workers' compensation law is amended by adding a new section  
27 50-a to read as follows:

28 § 50-a. Group self-insurer default offset fund. 1. The chair shall  
29 create a fund to be known as the group self-insurer default offset fund  
30 and such fund shall be held in the sole custody of the chair. The chair  
31 may transfer the money in such fund to the administrative account as  
32 necessary to effectuate the purpose of this section. The chair shall  
33 use the money in the fund to pay claims for defaulted group self-insur-  
34 ers, where sufficient moneys for such payment have not been collected or  
35 are not anticipated to be collected from members of a defaulted group  
36 self-insurer, or to offset such amount against any assessment it would  
37 otherwise impose against private individual and group self-insurers  
38 under paragraph (g) of subdivision five of section fifty of this arti-  
39 cle.

40 2. At any time prior to April first, two thousand nine, the chair may  
41 withdraw funds from the uninsured employers fund provided for under  
42 section twenty-six-a of this chapter, up to such amount as the chair  
43 determines is sufficient to fund any anticipated additional expenses of  
44 such fund, taking into account anticipated available revenues, but in no  
45 event to exceed fifty-two million dollars in the aggregate. Such funds  
46 shall be deposited into the group self-insurer offset fund, and used in  
47 accordance with subdivision one of this section. As consistent with this  
48 section, the chair may set the timing of such withdrawals in its  
49 discretion.

50 3. Beginning on January first, two thousand ten, and each year there-  
51 after, the chair shall add to the total of each annual assessment made  
52 under paragraph g of subdivision five of section fifty of this article  
53 the sum of up to three million dollars, to be allocated to private group  
54 and individual self-insurers in accordance with such paragraph. The  
55 chair shall assess additional funds under this paragraph as necessary to  
56 insure that there are sufficient funds in the fund for uninsured employ-

1 ers to meet its liabilities, or if necessary in accordance with section  
2 one hundred fifty-one of this chapter. Such funds as are collected  
3 pursuant to this subdivision shall be deposited into the uninsured  
4 employer fund until all funds withdrawn therefrom under subdivision one  
5 of this section are returned with interest calculated at an annual rate  
6 equal to the rate of return on funds in the fund for uninsured employers  
7 from the prior year.

8 4. At such time as the board is not obligated to pay any claims aris-  
9 ing out of a defaulted self-insurer, the fund created under this section  
10 shall be closed, and any money remaining in the fund shall be deposited  
11 into the uninsured employer fund.

12 § 6. The workers' compensation law is amended by adding a new section  
13 50-b to read as follows:

14 § 50-b. Task force on group self-insurance. There is established the  
15 task force on group self-insurance whose membership shall consist of the  
16 chair or his or her designee, the superintendent of insurance or his or  
17 her designee, the commissioner of labor or his or her designee, and  
18 twelve members to be appointed by the governor as follows: two upon  
19 nomination of the speaker of the assembly, two upon nomination of the  
20 temporary president of the senate, one upon nomination by the president  
21 of the New York state American federation of labor-congress of indus-  
22 trial organizations, one upon the nomination of the business council of  
23 New York state, one who is a representative of an individual self-insur-  
24 er or representative of an organization that represents individual self-  
25 insurers, one who is a trustee or administrator of a group self-insurer  
26 or representative of an organization that represents group self-insur-  
27 ers, one who is a representative of an organization that represents  
28 workers' compensation claimants, and three others without limitation.  
29 The governor shall appoint the chair of the task force. The task force  
30 shall report to the governor, the speaker of the assembly and the tempo-  
31 rary president of the senate on or before February first, two thousand  
32 nine making recommendations concerning:

- 33 1. the prevention of future defaults by group self-insurers;
- 34 2. regulation of group self-insurers and its impact and effective-  
35 ness;
- 36 3. payment of claims insured by defaulted group self-insurers;
- 37 4. the long term viability of group self-insurers; and
- 38 5. such other topics related to group self-insurance as the task force  
39 may deem necessary.

40 § 7. Subparagraph 4 of paragraph (h) of subdivision 8 of section 15 of  
41 the workers' compensation law, as amended by chapter 6 of the laws of  
42 2007, is amended to read as follows:

43 (4) As soon as practicable after May first in the year nineteen  
44 hundred fifty-eight, and annually thereafter as soon as practicable  
45 after January first in each succeeding year, the chair of the board  
46 shall assess upon and collect from all self-insurers, except group self-  
47 insurers, the state insurance fund, all insurance carriers and group  
48 self-insurers, (A) a sum equal to one hundred fifty per centum of the  
49 total disbursements made from the special disability fund during the  
50 preceding calendar year (not including any disbursements made on account  
51 of anticipated liabilities or waiver agreements funded by bond proceeds  
52 and related earnings), less the amount of the net assets in such fund as  
53 of December thirty-first of said preceding calendar year, and (B) a sum  
54 sufficient to cover debt service, and associated costs (the "debt  
55 service assessment") to be paid during the calendar year by the dormito-  
56 ry authority, as calculated in accordance with subparagraph five of this

1 paragraph. Such assessments shall be allocated to (i) self-insurers  
2 except group self-insurers and the state insurance fund based upon the  
3 proportion that the total compensation payments made by all self-insur-  
4 ers except group self-insurers and the state insurance fund bore to the  
5 total compensation payments made by all self-insurers except group self-  
6 insurers, the state insurance fund, all insurance carriers and group  
7 self-insurers, (ii) insurance carriers based upon the proportion that  
8 the total compensation payments made by all insurance carriers bore to  
9 the total compensation payments by all self-insurers except group self-  
10 insurers, the state insurance fund and all insurance carriers and group  
11 self-insurers during the fiscal year which ended within said preceding  
12 calendar year, and (iii) group self-insurers based upon the proportion  
13 that the total compensation payments made by all group self-insurers  
14 bore to the total compensation payments made by all self-insurers, the  
15 state insurance fund and all insurance carriers during the fiscal year  
16 which ended within said preceding calendar year. Insurance carriers and  
17 self-insurers shall be liable for all such assessments regardless of the  
18 date on which they came into existence, or whether they have made any  
19 claim for reimbursement from the special disability fund. The portion of  
20 such sum allocated to self-insurers except group self-insurers and the  
21 state insurance fund that shall be collected from each self-insurer  
22 except a group self-insurer and the state insurance fund shall be a sum  
23 equal to the proportion of the amount which the total compensation  
24 payments of each such self-insurer except a group self-insurer or the  
25 state insurance fund bore to the total compensation payments made by all  
26 self-insurers except group self-insurers and the state insurance fund  
27 during the fiscal year which ended within said preceding calendar year.  
28 The portion of such sum allocated to insurance carriers that shall be  
29 collected from each insurance carrier shall be a sum equal to that  
30 proportion of the amount which the total premiums written by each such  
31 insurance carrier bore to the total written premiums reported by all  
32 insurance carriers during the fiscal year which ended within said  
33 preceding calendar year. The portion of such sum allocated to group  
34 self-insurers that shall be collected from each group self-insurer shall  
35 be a sum equal to that proportion of the amount which the pure premium  
36 calculation for each such group self-insurer bore to the total pure  
37 premium calculation for all group self-insurers for the calendar year  
38 which ended within the preceding state fiscal year. The payments from  
39 the debt service assessment, unless otherwise set forth in the special  
40 disability fund financing agreement, are hereby pledged therefor and  
41 shall be deemed the first monies received on account of assessments in  
42 each year. For the purposes of this paragraph, "direct premiums written"  
43 means gross premiums, including policy and membership fees, less return  
44 premiums and premiums on policies not taken. For purposes of this para-  
45 graph "pure premium calculation" means the New York state annual payroll  
46 as of December thirty-first of the preceding year by class code for each  
47 employer member of a group self-insurer multiplied by the applicable  
48 [~~rate~~] loss cost for each class code as determined by the workers'  
49 compensation rating board in effect on December thirty-first of the  
50 preceding year, and for a group or individual self-insurer who has  
51 ceased to self-insure shall be based on payroll at the time the group or  
52 individual self-insurer ceased to self-insure reduced by a factor  
53 reflecting the reduction in the group or individual self-insurer's self-  
54 insurance liabilities since ceasing to self-insure. An employer who has  
55 ceased to be a self-insurer or a group that ceases to be licensed as a  
56 group self-insurer shall continue to be liable for any assessments into

1 said fund on account of any compensation payments made by him or her on  
2 his or her account during such fiscal year, and the security fund,  
3 created under the provisions of section one hundred seven of this chap-  
4 ter, shall, in the event of the insolvency of any insurance company, be  
5 liable for any assessments that would have been made against such compa-  
6 ny except for its insolvency. No assessment shall be payable from the  
7 aggregate trust fund, created under the provisions of section twenty-  
8 seven of this article, but such fund shall continue to be liable for all  
9 compensation that shall be payable under any award or order of the  
10 board, the commuted value of which has been paid into such fund. Such  
11 assessments when collected shall be deposited with the commissioner. Such  
12 taxation and finance for the benefit of such fund. Unless otherwise  
13 provided, such assessments, shall not constitute an element of loss for  
14 the purpose of establishing rates for compensation insurance but shall  
15 for the purpose of collection be treated as separate costs by carriers.  
16 All insurance carriers and the state insurance fund, shall collect such  
17 assessments, from their policyholders through a surcharge based on  
18 premiums in accordance with rules set forth by the New York workers'  
19 compensation rating board, as approved by the superintendent of insur-  
20 ance. Such surcharge shall be considered as part of premium for purposes  
21 prescribed by law including, but not limited to, computing premium tax,  
22 reporting to the superintendent of insurance pursuant to section nine-  
23 ty-nine of this chapter and section three hundred seven of the insurance  
24 law, determining the limitation of expenditures for the administration  
25 of the state insurance fund pursuant to section eighty-eight of this  
26 chapter and the cancellation by an insurance carrier, including the  
27 state insurance fund, of a policy for non-payment of premium. The  
28 provisions of this paragraph shall not apply with respect to policies  
29 containing coverage pursuant to subsection (j) of section three thousand  
30 four hundred twenty of the insurance law relating to every policy  
31 providing comprehensive personal liability insurance on a one, two,  
32 three or four family owner-occupied dwelling. The state insurance fund  
33 shall, notify its insureds that such assessments, shall be, for the  
34 purpose of recoupment, treated as separate costs, respectively for the  
35 purpose of premiums billed on or after October first, nineteen hundred  
36 ninety-four.

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

44 § 8. Subdivision 7 of section 134 of the workers' compensation law,  
45 as amended by chapter 6 of the laws of 2007, is amended to read as  
46 follows:

47 7. [A] An individual self-insured employer shall be eligible for a  
48 reduction in the security deposit provided for in subdivision three of  
49 section fifty of this [article] chapter, and a member of a group shall  
50 be eligible for a credit against their contributors if such credit is  
51 authorized by the chair and in accordance with limitations set by the  
52 chair, if such employer has implemented any or all of the following: a.  
53 a safety incentive plan that has been recommended by a safety and loss  
54 management specialist after such specialist has been certified by the  
55 commissioner of labor or if such plan otherwise conforms to regulations  
56 promulgated by the commissioner of labor;

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

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

6 The credit for each program shall be no greater than established by  
7 regulations issued by the superintendent of insurance or such lesser  
8 amount as determined by the chair of the board to be necessary to assure  
9 that the deposit remains sufficient to secure the employer's liability  
10 to pay the compensation provided in this chapter. The chair, in consul-  
11 tation with the superintendent of insurance, shall adopt regulations  
12 which provide for recertification on an annual basis.

13 § 9. Paragraphs (a) and (f) of subdivision 2 of section 26-a of the  
14 workers' compensation law, paragraph (a) as amended and paragraph (f) as  
15 added by chapter 316 of the laws of 1991, are amended to read as  
16 follows:

17 (a) There is hereby created a fund which shall be known as the "unin-  
18 sured employers' fund" to provide for the payment of awards against  
19 uninsured employers in accordance with the provisions of this section  
20 and shall be available only for the purposes stated in this subdivision,  
21 and the assets thereof shall not at any time be appropriated or directed  
22 to any other use or purpose, except as set forth in section fifty-a of  
23 this chapter.

24 (f) As promptly as practicable after July first, nineteen hundred  
25 ninety-one and annually thereafter as soon as practicable after January  
26 first in each succeeding year, the chair shall ascertain the condition  
27 of the uninsured employers' fund. The chair shall transfer to the fund  
28 out of the moneys collected pursuant to subdivision two of section one  
29 hundred fifty-one of this chapter an amount which will raise the net  
30 cash assets of the fund to the level of either the amount spent by the  
31 fund in the prior year, or the amount estimated to be expended by the  
32 fund in the succeeding year, whichever is greater, except that such  
33 requirement shall not apply between August first, two thousand eight and  
34 August first, two thousand fifteen to the extent that section fifty-a of  
35 this chapter permits the fund to be at a different level.

36 § 10. Subdivision 5 of section 52 of the workers' compensation law, as  
37 amended by chapter 6 of the laws of 2007, is amended to read as follows:

38 5. The chair, upon finding that an employer has failed for a period of  
39 not less than ten consecutive days to make the provision for payment of  
40 compensation required by section fifty of this article, may impose upon  
41 such employer, in addition to all other penalties, fines or assessments  
42 provided for in this chapter, a penalty of [~~one~~] two thousand dollars  
43 for each ten day period of non-compliance or a sum not in excess of two  
44 times the cost of compensation for its payroll for the period of such  
45 failure, which sum shall be paid into the uninsured employers' fund  
46 created under section twenty-six-a of this chapter. When an employer  
47 fails to provide business records sufficient to enable the chair to  
48 determine the employer's payroll for the period requested for the calcu-  
49 lation of the penalty provided in this section, the imputed weekly  
50 payroll for each employee, corporate officer, sole proprietor, or part-  
51 ner shall be the New York state average weekly wage, multiplied by 1.5.  
52 Where the employer is a corporation, the president, secretary and treas-  
53 urer thereof shall be liable for the penalty. If the employer shall  
54 within thirty days after notice of the imposition of a penalty by the  
55 chair pursuant to this subdivision make an application in affidavit form

1 for a redetermination review of such penalty the chairman shall make a  
2 decision in writing on the issues raised on such application.

3 § 11. Subdivision 1 of section 125-a of the workers' compensation law,  
4 as added by chapter 6 of the laws of 2007, is amended to read as  
5 follows:

6 1. An insurance carrier is guilty of unlawfully discriminating against  
7 an injured veteran when with respect to workers' compensation insurance,  
8 the insurer knowingly and intentionally (a) discriminates against an  
9 injured veteran because of the veteran's injury or status as a veteran,  
10 or (b) [~~discourages~~] encourages or causes an employer or other entity to  
11 unlawfully discriminate against an injured veteran in hiring or  
12 discharging decisions because of the veteran's injury or status as a  
13 veteran.

14 § 12. Section 2490 of the public health law, as added by chapter 67 of  
15 the laws of 1989, is amended to read as follows:

16 § 2490. Oversight committee. 1. There is hereby established the occu-  
17 pational health clinics oversight committee to be comprised of the  
18 following persons or their designees: the commissioner of health[~~, who~~  
19 ~~shall serve as chairperson~~]; the commissioner of labor; the chairperson  
20 of the workers' compensation board; [~~two~~] six persons appointed by the  
21 governor, one of whom shall be on nomination of the New York state Amer-  
22 ican federation of labor-congress of industrial organizations, and one  
23 of whom shall be on the nomination of the business council of the state  
24 of New York; two persons appointed by the temporary president of the  
25 senate; two persons appointed by the speaker of the assembly; one person  
26 appointed by the minority leader of the senate and one person appointed  
27 by the minority leader of the assembly. The governor shall designate a  
28 chairperson from among the members of the committee. The initial  
29 appointments shall be made on or before September first, two thousand  
30 eight.

31 2. The committee shall meet at least four times a year. Special meet-  
32 ings may be called by the chairperson.

33 3. Members of the oversight committee shall receive no compensation  
34 for their services, but shall be allowed their actual and necessary  
35 expenses incurred in the performance of their duties hereunder.

36 4. Vacancies shall be filled in the same manner as the original  
37 appointments.

38 5. The committee shall make recommendations to the governor and the  
39 legislature on or before September thirtieth, [~~nineteen hundred ninety-~~  
40 ~~one~~] two thousand nine, regarding:

41 (a) statewide needs to be met by the network;

42 (b) coordination of clinic activities with [~~state agencies,~~] not-for-  
43 profit [~~and~~], private sector concerns and state agencies, including but  
44 not limited to an evaluation of current jurisdictional and oversight  
45 responsibilities;

46 (c) coordination and sharing of clinic resources and services;

47 (d) dissemination of research results and educational information;  
48 [~~and~~]

49 (e) identification of funding sources for the network[~~+~~];

50 (f) the activities of the clinics and their effectiveness in meeting  
51 the objectives as set forth in statute and in clinic specific contracts  
52 with the state;

53 (g) local, regional, occupation or business sector specific needs that  
54 may be met by one or more clinic;

55 (h) other issues as determined by the oversight committee; and

1 (i) incorporation of provisions to implement its recommendations in  
2 requests for applications of state funding for occupational health clin-  
3 ics.

4 § 13. The public health law is amended by adding a new section 2490-a  
5 to read as follows:

6 § 2490-a. Occupational health clinic advisory committees. The chief  
7 executive officer of every clinic in the occupational health clinic  
8 network shall convene an advisory committee consisting of two local  
9 representatives each of business, labor unions, public health agencies  
10 and community groups which shall be selected in consultation with the  
11 occupational health clinics oversight committee. The oversight commit-  
12 tee will assist in the development of policies, the creation and imple-  
13 mentation of a targeted outreach plan for working with business, unions  
14 and workers, an assessment of clinic-specific funding needs and poten-  
15 tial funding sources, and overall guidance for the clinics on an ongoing  
16 basis.

17 § 14. Notwithstanding any inconsistent provision of law to the contra-  
18 ry, effective April 1, 2009, the chair of the workers' compensation  
19 board is directed to provide an additional four million dollars for the  
20 purpose of supporting the New York state occupational health clinics  
21 network, above the amount provided in state fiscal year 2008-09 for such  
22 purpose, for state fiscal year 2009-10 from funds received pursuant to  
23 section one hundred fifty-one of the workers' compensation law. Such  
24 additional funds shall be deposited to the credit of the department of  
25 health miscellaneous special revenue fund (339), occupational health  
26 clinics account (W4).

27 § 15. The opening paragraph of paragraph (b) of subdivision 2 of  
28 section 151 of the workers' compensation law, as amended by chapter 6 of  
29 the laws of 2007, is amended to read as follows:

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

1 amount which the total compensation payments of each such self-insurer  
2 except a group self-insurer or the state insurance fund in such year  
3 bore to the total compensation payments made by all self-insurers except  
4 group self-insurers and the state insurance fund. The portion of the  
5 assessment for such expenses allocated to insurance carriers that shall  
6 be collected from each such insurance carrier shall be a sum equal to  
7 that proportion of the amount which the total premiums written by each  
8 such insurance carrier in such year bore to the total written premiums  
9 reported by all insurance carriers. The portion of such sum allocated to  
10 group self-insurers that shall be collected from each group self-insurer  
11 shall be a sum equal to that proportion of the amount which the pure  
12 premium calculation for each such group self-insurer bore to the total  
13 pure premium calculation for all group self-insurers for the calendar  
14 year which ended within the preceding state fiscal year. The amounts so  
15 secured shall be used for the payment of the expenses of administering  
16 this chapter. Pure premium for assessments against individual and group  
17 self-insurers who ceased to self-insure shall be based on payroll at the  
18 time the individual or group self-insurer has ceased to self-insure,  
19 reduced by a factor reflecting the reduction in the group or individual  
20 self-insurer's self-insurance liabilities since ceasing to self-insure.

21 § 16. This act shall take effect immediately, provided, however, that:

22 (a) the amendments to subparagraphs (b) and (g) of paragraph 2, para-  
23 graph 4, subparagraph (a) of paragraph 5 and subparagraph (b) of para-  
24 graph 7 of subdivision 3-a of section 50 of the workers' compensation  
25 law, made by section one of this act and the amendments to paragraph b  
26 of subdivision 5 of section 50 of the workers' compensation law, made by  
27 section three of this act shall take effect on the one hundred twentieth  
28 day after it shall have become a law except that regulations to effectuate  
29 such provisions may be issued prior to such effective date;

30 (b) subparagraphs (b), (c) and (d), clause 2 of subparagraph (e) and  
31 clause 2 of subparagraph (f) of paragraph 5 and subparagraph (b) of  
32 paragraph 6 of subdivision 3-a of section 50 of the workers' compen-  
33 sation law as added by section one of this act and paragraph 8 of subdivi-  
34 sion 3-a of section 50 of the workers' compensation law as amended by  
35 section one of this act, the amendments to paragraph a of subdivision  
36 3-b of section 50 of the workers' compensation law made by section two  
37 of this act, and subdivisions 10 and 11 of section 50 of the workers'  
38 compensation law, as added by section four of this act shall take effect  
39 on the ninetieth day after it shall have become a law and shall apply  
40 only to those acts occurring on or after such date; and

41 (c) the amendments to subparagraph 2 of paragraph c of subdivision 5  
42 of section 50 of the workers' compensation law made by section three of  
43 this act shall take effect January 1, 2009.

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