

ASSEMBLY, No. 3353

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED OCTOBER 23, 2008

Sponsored by:

Assemblyman NELSON T. ALBANO

District 1 (Cape May, Atlantic and Cumberland)

SYNOPSIS

Authorizes establishment through collective bargaining of alternative workers' compensation program and group self-insurance plans.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT authorizing the establishment through collective bargaining
2 of alternative workers' compensation programs and group self-
3 insurance plans, amending R.S.34:15-77 and supplementing
4 chapter 15 of Title 34 of the Revised Statutes.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. (New section) Upon approval by the Commissioner of
10 Labor and Workforce Development pursuant to section 2 of this act,
11 the commissioner, each judge of compensation, and the courts shall
12 recognize as valid and binding any provisions of a collective
13 bargaining agreement between an employer or a group of
14 employers, including a group of employers that have established an
15 approved plan of group self-insurance pursuant to section 7 of this
16 act, and one or more unions that are the recognized or certified
17 exclusive bargaining representatives of the employees of the
18 employers, to establish obligations and procedures relating to
19 workers' compensation to provide for any or all of the following:

20 a. An alternative dispute resolution system that supplements,
21 modifies, or replaces the procedural or dispute provisions of chapter
22 15 of Title 34 of the Revised Statutes, which alternative dispute
23 resolution system may include mediation, arbitration, or other
24 dispute resolution proceedings, the results of which may be final
25 and binding upon the parties, provided that:

26 (1) Any final decision made under the alternative dispute
27 resolution system regarding the awarding of compensation may be
28 appealed to the Appellate Division of the Superior Court in the
29 same manner as a judgment of a judge of compensation;

30 (2) No administrator, ombudsman, mediator, arbitrator or other
31 individual involved in the operation of the alternative dispute
32 resolution system shall be selected or employed without the mutual
33 agreement of the employers and the unions; and

34 (3) The operation of the system shall be overseen by a body
35 with equal employer and union representation;

36 b. The use of a list, agreed upon by the employers and the
37 unions, of providers of medical treatment that are the exclusive
38 source of all medical and related treatment provided pursuant to
39 chapter 15 of Title 34 of the Revised Statutes, notwithstanding any
40 other provisions of that chapter regarding the selection of providers
41 of medical treatment;

42 c. The use of a list, agreed upon by the employers and the
43 unions, of qualified medical evaluators that are the exclusive source
44 of medical evaluations provided pursuant to chapter 15 of Title 34
45 of the Revised Statutes, notwithstanding any other provisions of

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

Matter underlined thus is new matter.

- 1 that chapter regarding the selection of providers of medical
2 evaluation;
- 3 d. The creation of a light-duty or transitional return-to-work
4 program;
- 5 e. The use of a list, agreed upon by the employers and the
6 unions, of vocational rehabilitation providers and retraining
7 programs that are the exclusive source of vocational rehabilitation
8 and retraining services for injuries compensable under chapter 15 of
9 Title 34 of the Revised Statutes;
- 10 f. The establishment of joint labor-management occupational
11 safety and health committees;
- 12 g. With respect to employees who are provided group health
13 benefits and temporary disability benefits for non-occupational
14 injury and illness by employers, the coordination or integration of
15 the delivery, funding, or both funding and delivery, of
16 compensation provided under chapter 15 of Title 34 of the Revised
17 Statutes with group health benefits and with non-occupational
18 temporary disability benefits, including benefits provided pursuant
19 to the "Temporary Disability Benefits Law," P.L.1948, c.110
20 (C.43:21-25 et seq.); and
- 21 h. Benefits supplemental to those provided under chapter 15 of
22 Title 34 of the Revised Statutes or under the "Temporary Disability
23 Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.).
24
- 25 2. (New section) a. Any one or more unions that are
26 recognized or certified as exclusive bargaining representatives may
27 file with the Commissioner of Labor and Workforce Development a
28 petition seeking authorization to negotiate an agreement with one or
29 more employers pursuant to subsection 1 of this act. The petition
30 shall include the proof required by the commissioner that the unions
31 are the exclusive bargaining representatives for the employees
32 subject to the agreement, specify the bargaining unit or units to be
33 included and the names of the unions and employers, and be
34 accompanied by a copy of any current applicable collective
35 bargaining agreement. Upon verification that the petitioners are the
36 exclusive bargaining representatives and that the petition satisfies
37 all requirements of this subsection and any applicable regulations
38 adopted by the commissioner, the commissioner shall notify the
39 employers and unions that they are authorized to enter into the
40 negotiations. Upon the completion of the negotiations, a copy of
41 the agreement to establish the alternative workers' compensation
42 program, identifying the employer or the group of employers and
43 the local unions or district councils, shall be filed with the
44 commissioner. Within 21 days of receipt of an agreement, the
45 commissioner shall review the agreement for compliance with the
46 provisions of chapter 15 of Title 34 of the Revised Statutes and
47 section 3 of this act, and either approve the agreement or deny
48 approval and notify the parties of any additional information

1 required or any modification of the agreement determined by the
2 commissioner to be necessary to bring the agreement into
3 compliance with the provisions of this act and obtain approval.

4 b. If the employer is insured under chapter 15 of Title 34 it
5 shall obtain consent from its insurance carrier to enter into an
6 agreement as provided in section 1 of this act, unless the employer
7 obtains insurance from a different carrier or participates in a group
8 plan for self-insurance pursuant to section 7 of this act.

9
10 3. (New section) Nothing in this act shall be construed as
11 permitting any provision of an agreement or group plan for self-
12 insurance that:

13 a. Diminishes an employee's entitlement to compensation fully
14 paid by the employer for total or partial disability, temporary
15 disability, rehabilitation, medical treatment or compensation to
16 dependents or survivors as provided in chapter 15 of Title 34 of the
17 Revised Statutes;

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

22 c. Denies any employee the right to representation by an
23 attorney at any stage of the resolution of any aspect of a workers'
24 compensation claim, and all rights to have attorney, witness and
25 other fees paid as provided by chapter 15 of Title 34 of the Revised
26 Statutes.

27 Any portion of any agreement or group plan for self-insurance
28 that violates any provision of this section is null and void. Each
29 employee shall be notified of the protections of rights provided by
30 this section upon first becoming subject to the agreement or plan
31 and upon any injury compensable under the agreement or plan.

32
33 4. (New section) Commencing July 1, 2010, and annually
34 thereafter, the Commissioner of Labor and Workforce Development
35 shall provide to the Governor and the Legislature, and make public,
36 an annual report on agreements entered into pursuant to section 1 of
37 this act, which shall include aggregate data on the following:

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

40 b. The number of claims processed under alternative dispute
41 resolution systems established pursuant to section 1 of this act,
42 including the number of claims submitted to mediation, arbitration,
43 or other dispute resolution procedures under the systems, and the
44 number that were appealed to judges of compensation or courts;

45 c. The projected incurred costs and actual costs of claims under
46 the agreements;

47 d. Any occupational safety and health activities under the
48 agreements and their impact;

1 e. The numbers of employers and employees participating in
2 vocational rehabilitation and light-duty programs under the
3 agreements;

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

7 g. The numbers of employers and workers participating in
8 programs under the agreements of joint labor-management selection
9 of medical providers.

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

14 The data obtained by the commissioner for the preparation of the
15 annual report shall be confidential and not subject to public
16 disclosure under any law of this State, except for information
17 disclosed in the report in a manner which is not identifiable with
18 any individual employee or employer, and except that the
19 commissioner shall make public a current list of employers and
20 unions entering into agreements approved pursuant to section 2 of
21 this act.

22
23 5. (New section) The Commissioner of Labor and Workforce
24 Development shall adopt all rules and regulations deemed necessary
25 or useful by the commissioner to effectuate the provisions of this
26 act regarding the authorization, approval and oversight of
27 agreements negotiated pursuant to section 1 of this act, including
28 any requirements deemed appropriate by the commissioner
29 regarding the obtaining and retaining of records or information on
30 programs under the agreements and regarding procedures for
31 alternative dispute resolution systems provided for by the
32 agreements and procedures for appeals of decisions of those
33 systems.

34
35 6. R.S.34:15-77 is amended to read as follows:
36 34:15-77. Any employer desiring to carry his own liability
37 insurance may make application to the Commissioner of Banking
38 and Insurance showing his financial ability to pay compensation.
39 The commissioner, if satisfied of the applicant's financial ability
40 and the permanence of his business, shall by written order exempt
41 the applicant from insuring the whole or any part of his
42 compensation liability.

43 The commissioner may from time to time require any employer
44 exempted as herein provided to furnish further statements of
45 financial ability and if at any time it appears to him that any such
46 employer is no longer financially able to carry the risk of
47 compensation liability the commissioner shall revoke his order
48 granting exemption, whereupon the employer shall immediately

1 insure his liability under this chapter in a mutual association or
2 other insurance company authorized to engage in workers'
3 compensation in this State.

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

19 Any employer or group of employers exempted as herein
20 provided may for its own protection insure its liability for the
21 payment of any stated loss in excess of \$100,000.00 by reason of
22 any single accident or by reason of occupational diseases scheduled
23 in this chapter; provided, that any such contract of insurance shall
24 operate only between the employer or group of employers and its
25 insurance carrier and shall not be subject to any of the provisions of
26 this chapter.

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

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

39 Pursuant to the provisions of section 7 of P.L. _____, c. _____ (C. _____)
40 (pending before the Legislature as this bill), a group of employers
41 who are participating in, or establishing, a Taft-Hartley trust fund,
42 as defined in that section, may apply to the Commissioner of
43 Banking and Insurance for approval to enter into agreements to pool
44 their liabilities under chapter 15 of Title 34 of the Revised Statutes
45 for the purpose of qualifying as members of a group plan for self-
46 insurance. An employer member of an approved group plan shall
47 be classified as a self-insurer and shall be subject to all
48 requirements, obligations and liabilities of that chapter regarding an

1 employer providing compensation by means of self-insurance,
2 including all obligations to make payments to the Second Injury
3 Fund, the New Jersey Self-Insurers Guaranty Association and the
4 uninsured employer's fund, and shall also be subject to the
5 provisions of section 7 of P.L. , c. (C.)(now pending before
6 the Legislature as this bill).
7 (cf: P.L.1983, c. 376, s. 1)
8

9 7. (New section) a. If a group of employers who are
10 participating in, or establishing, a Taft-Hartley trust fund applies to
11 the Commissioner of Banking and Insurance for approval to
12 establish a group plan for self-insurance to provide all
13 compensation required by chapter 15 of Title 34 of the Revised
14 Statutes for the employees of the employers who are members of
15 the group, the group shall present satisfactory proof to the
16 Commissioner of Banking and Insurance of its financial ability to
17 pay that compensation, including a statement of the group's
18 revenues, their source and assurance for their continuance. Under
19 the group plan, the group shall assume the liability of all the
20 employers within the group under the terms of a trust agreement
21 approved by the Commissioner of Banking and Insurance, and pay
22 all compensation for which the employers are liable under chapter
23 15 of Title 34 of the Revised Statutes. No employer participating
24 in the group plan shall be relieved from the liability for the
25 compensation except by the payment by the group plan or by the
26 employer. The insolvency or bankruptcy of a participating
27 employer shall not relieve the group self-insurer from the payment
28 of compensation for injuries or death sustained by an employee
29 during the time the employer was a participant in the group plan.

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

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

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

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

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

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

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

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

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

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

23 d. For the purposes of this section and R.S.34:15-77, "Taft-
24 Hartley trust fund" means a labor-management, jointly-
25 administered, worker benefit trust fund formed pursuant to an
26 agreement collectively bargained under the provisions of the "Labor
27 Management Relations Act, 1947," 29 U.S.C.s.141 et seq. between
28 one or more employers and one or more unions that are the
29 recognized or certified exclusive bargaining representatives of the
30 employees of those employers.

31

32 8. (New section) The Commissioner of Banking and Insurance
33 shall, in consultation with the Commissioner of Labor and
34 Workforce Development, adopt all rules and regulations necessary
35 or useful to effectuate the provisions of this section regarding the
36 recognition, approval, oversight and revocation of approval of a
37 group plan, including any fee schedules that the Commissioner of
38 Banking and Insurance deems appropriate.

39

40 9. This act shall take effect on the 120th day following
41 enactment.

42

43

44

STATEMENT

45

46 This bill authorizes the establishment through collective
47 bargaining of alternative workers' compensation programs to
48 provide for the delivery of fair and timely workers' compensation

1 benefits for work-related injuries as required by the New Jersey
2 workers' compensation law (N.J.S.A.34:15-1 et seq.), including any
3 or all of the following:

- 4 1. Alternative dispute resolution systems for workers'
5 compensation claims, including mediation, arbitration or other
6 dispute resolution proceedings, with their administrators,
7 ombudsmen, mediators, arbitrators or other personnel selected,
8 employed and overseen jointly by the employers and the unions;
- 9 2. The use of lists, agreed upon by the employers and the
10 unions, of providers of medical treatment, medical evaluation and
11 rehabilitation as the exclusive providers of those services;
- 12 3. The creation of light-duty and transitional return-to-work
13 programs;
- 14 4. Joint labor-management occupational safety and health
15 committees;
- 16 5. The coordination or integration of the delivery of workers'
17 compensation with group health benefits and non-occupational
18 temporary disability benefits; and
- 19 6. Benefits supplementary to benefits provided under workers'
20 compensation or temporary disability insurance.

21 The Commissioner of Labor and Workforce Development is
22 required to monitor the agreements, issue annual reports regarding
23 the agreements and set standards regarding procedures for
24 alternative dispute resolution and other programs provided under
25 the agreements.

26 The bill also permits groups of employers participating in
27 Taft-Hartley trust funds to apply to the Commissioner of Banking
28 and Insurance for approval to enter into agreements to pool their
29 workers' compensation liabilities for the purpose of qualifying as
30 members of a group plan for self-insurance. The bill requires the
31 Commissioner of Banking and Insurance to recognize as valid a
32 group plan for the payment of workers' compensation by a Taft-
33 Hartley trust fund if the plan is negotiated between the employer
34 group and one or more unions, and it complies with the
35 Commissioner of Banking and Insurance's requirements to disclose
36 information and take measures needed to ensure the payment of
37 compensation.

38 The bill prohibits such agreements or group plans to diminish
39 any employee entitlement to workers' compensation or temporary
40 disability benefits or deny or diminish any rights regarding the
41 obtaining of compensation or benefits, including rights provided by
42 law for representation by an attorney and payment of attorney,
43 witness or other fees.