

AMENDED IN SENATE MAY 12, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2733

Introduced by Committee on Insurance (Assembly Members Perea (Chair), Hagman (Vice Chair), Bradford, Ian Calderon, Cooley, Dababneh, Frazier, Gonzalez, Nestande, V. Manuel Pérez, and Wieckowski)

February 25, 2014

An act to amend Section 3254.1 of the Unemployment Insurance Code, relating to disability compensation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2733, as amended, Committee on Insurance. Disability compensation: voluntary plans.

Existing law authorizes an employer, a majority of the employees employed in this state of an employer, or both, to apply to the Director of Employment Development for approval of a voluntary plan for the payment of disability benefits to the employees electing to be in a voluntary plan. Existing law, until January 1, 2015, authorizes the Director of Employment Development to approve a single voluntary plan for all of the small-business-third-party administrator's clients and their employees if specified criteria are met.

This bill would extend the operation of these provisions indefinitely. This bill would require the small-business-third party administration use separate accounting ledgers, rather than individual subaccounts, for each client's contributions and plan assets. The bill would make the small-business-third-party administrator, rather than the employer, responsible for providing the financial security requirements for the

plan. The bill would also authorize the Director of Employment Development to terminate a plan for cause and to recover plan assets from the small-business-third-party administrator, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3254.1 of the Unemployment Insurance
2 Code is amended to read:

3 3254.1. (a) For the purposes of this section,
4 “small-business-third-party administrator” (hereafter SBTPA),
5 means an applicant that the director finds meets all of the following
6 criteria at the time of application:

7 (1) The SBTPA administers voluntary disability plans on behalf
8 of its clients pursuant to a written agreement in a form and manner
9 approved by the director.

10 (2) The SBTPA has at least 1,000 California domiciled clients,
11 80 percent of whom have fewer than 20 employees.

12 (3) The SBTPA processes payroll for its California domiciled
13 clients.

14 (4) The SBTPA offers workers’ compensation insurance to its
15 California domiciled clients through an affiliated California
16 domiciled insurance company.

17 (b) Except as modified by this section, “voluntary plan” shall
18 be defined as, and shall be subject to the same provisions as, a
19 “voluntary plan,” as set forth in this chapter.

20 (c) The director may approve a single voluntary plan for all of
21 an SBTPA’s clients and their employees where all of the following
22 criteria are met:

23 (1) The plan is administered by the SBTPA.

24 (2) The plan establishes a master trust account that is
25 administered by the SBTPA, ~~but requires and requires the SBTPA~~
26 ~~to maintain a separate accounting ledger for each individual~~
27 ~~employer that is a client of the SBTPA to have a subtrust account~~
28 ~~that reflects that client’s employees’ reflect each client’s specific~~
29 ~~plan contributions and is not commingled with any other funds~~

1 *contributions*. The master trust account shall be held in a federally
2 insured bank.

3 (3) ~~(A) If a voluntary~~ *the* plan does not provide for the
4 assumption by an admitted disability insurer of the liability of the
5 employer to pay the benefits afforded by the plan, the director shall
6 not approve it unless the ~~employer~~ *SBTPA* meets the financial
7 security requirements of Section 3258 *on behalf of the SBTPA*
8 *clients and their employees*.

9 ~~(B) In addition to the security required by subparagraph (A),~~
10 ~~the director may require additional security from the SBTPA,~~
11 ~~consisting of the same types of financial instruments, and deposited~~
12 ~~in the same manner as in Section 3258, in an amount determined~~
13 ~~by the director to be adequate to pay disability claims of the~~
14 ~~SBTPA's clients' employees should the client's subaccount or the~~
15 ~~financial security provided in subparagraph (A) be inadequate.~~

16 (4) (A) The single voluntary plan will be in effect for a period
17 of not less than one year and, thereafter, continuously, unless the
18 Director of Employment Development finds that the SBTPA has
19 given notice of withdrawal of the plan. The notice filed by the
20 SBTPA shall be filed in writing with the Director of Employment
21 Development and shall be effective on the anniversary of the
22 effective date of the plan next following the filing of the notice,
23 but in any event shall not be less than 30 days from the time of the
24 filing of the notice; except that the plan may be withdrawn on the
25 operative date of any law increasing the benefit amounts provided
26 by Sections 2653 and 2655 or the operative date of any change in
27 the rate of worker contributions as determined by Section 984, if
28 notice of the withdrawal from the plan is transmitted to the Director
29 of Employment Development not less than 30 days prior to the
30 operative date of that law or change. If the plan is not withdrawn
31 on the 30 days' notice because of the enactment of a law increasing
32 benefits or because of a change in the rate of worker contributions
33 as determined by Section 984, the plan shall be amended to
34 conform to that increase or change on the operative date of the
35 increase or change.

36 (B) Any individual employer who is a client of the SBTPA, or
37 a majority of that client's employees employed in this state covered
38 by the plan, may also terminate their participation in the plan by
39 giving written notice of withdrawal from the plan to the SBTPA

1 and to the Director of Employment Development not less than 30
2 days prior to the date of withdrawal.

3 (C) *The Director of Employment Development may terminate*
4 *the participation of an individual employer client of the SBTPA*
5 *from the plan for cause, and the employer’s voluntary plan assets*
6 *shall be recovered from the SBTPA and not from the employer as*
7 *referenced in Section 3262.*

8 (5) The rights afforded to the covered employees are greater
9 than those provided for in Chapter 2 (commencing with Section
10 2625), including those provided for in Chapter 7 (commencing
11 with Section 3300).

12 (6) The plan has been made available to all of the employees
13 of the employer employed in this state or to all employees at any
14 one distinct, separate establishment maintained by the employer
15 in this state. “Employees” as used in this paragraph includes those
16 individuals in partial or other forms of short-time employment and
17 employees not in employment as the director shall prescribe by
18 authorized regulations.

19 (7) A majority of the employees of the client employed in this
20 state or a majority of the employees employed at any one distinct,
21 separate establishment maintained by the client in this state have
22 consented to the plan.

23 (8) If the plan provides for insurance, the form of the insurance
24 policies to be issued has been approved by the Insurance
25 Commissioner and is to be issued by an admitted disability insurer.

26 (9) The client has consented to the plan and has authorized the
27 SBTPA to make the payroll deductions required, if any, and deposit
28 the proceeds ~~in each client’s subtrust account~~ *into the master*
29 *account administered by the SBTPA as referenced in paragraph*
30 *(2).*

31 (10) The plan provides for the inclusion of future employees.

32 (11) The amount of deductions from the wages of an employee
33 of any client in effect for the plan shall not be increased on other
34 than an anniversary of the effective date of the plan except to the
35 extent that any increase in the deductions from the wages of an
36 employee allowed by Section 3260 permits that amount to exceed
37 the amount of deductions in effect.

38 (12) The approval of the plan or plans will not result in a
39 substantial selection of risks adverse to the Disability Fund.

1 (d) The department may adopt application forms and procedures
2 as deemed necessary to ensure compliance with this section, and
3 shall adopt any application forms and procedures within 60 days
4 of the enactment of this section.

5 (e) It is the intent of the Legislature in enacting paragraph (3)
6 of subdivision (c) that, in the event of the insolvency of an
7 employer-client of the SBTPA, or of the SBTPA, the disability
8 claims against the subaccount of any employer-client arising prior
9 to the date of the insolvency shall be satisfied by first accessing
10 the security of the SBTPA, as described in ~~subparagraph (B)~~ of
11 paragraph (3) of subdivision (c), rather than satisfying the claims
12 from the Disability Fund.

13 SEC. 2. This act is an urgency statute necessary for the
14 immediate preservation of the public peace, health, or safety within
15 the meaning of Article IV of the Constitution and shall go into
16 immediate effect. The facts constituting the necessity are:

17 In order to amend Section 3254.1 of the Unemployment
18 Insurance Code before it is repealed, it is necessary that this bill
19 go into immediate effect.