

Assembly Bill No. 2733

Passed the Assembly June 30, 2014

Chief Clerk of the Assembly

Passed the Senate June 26, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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 administrator 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.

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

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

3254.1. (a) For the purposes of this section, "small-business-third-party administrator" (hereafter SBTPA),

means an applicant that the director finds meets all of the following criteria at the time of application:

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

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

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

(4) The SBTPA offers workers' compensation insurance to its California domiciled clients through an affiliated California domiciled insurance company.

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

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

(1) The plan is administered by the SBTPA.

(2) The plan establishes a master trust account that is administered by the SBTPA, and requires the SBTPA to maintain a separate accounting ledger for each individual employer that is a client of the SBTPA to reflect each client's specific plan contributions. The master trust account shall be held in a federally insured bank.

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

(4) (A) The single voluntary plan will be in effect for a period of not less than one year and, thereafter, continuously, unless the Director of Employment Development finds that the SBTPA has given notice of withdrawal of the plan. The notice filed by the SBTPA shall be filed in writing with the Director of Employment Development and shall be effective on the anniversary of the effective date of the plan next following the filing of the notice, but in any event shall not be less than 30 days from the time of the filing of the notice; except that the plan may be withdrawn on the operative date of any law increasing the benefit amounts provided

by Sections 2653 and 2655 or the operative date of any change in the rate of worker contributions as determined by Section 984, if notice of the withdrawal from the plan is transmitted to the Director of Employment Development not less than 30 days prior to the operative date of that law or change. If the plan is not withdrawn on the 30 days' notice because of the enactment of a law increasing benefits or because of a change in the rate of worker contributions as determined by Section 984, the plan shall be amended to conform to that increase or change on the operative date of the increase or change.

(B) Any individual employer who is a client of the SBTPA, or a majority of that client's employees employed in this state covered by the plan, may also terminate their participation in the plan by giving written notice of withdrawal from the plan to the SBTPA and to the Director of Employment Development not less than 30 days prior to the date of withdrawal.

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

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

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

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

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

(9) The client has consented to the plan and has authorized the SBTPA to make the payroll deductions required, if any, and deposit the proceeds into the master account administered by the SBTPA as referenced in paragraph (2).

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

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

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

(d) The department may adopt application forms and procedures as deemed necessary to ensure compliance with this section.

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

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

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

Approved _____, 2014

Governor