

**ASSEMBLY BILL**

**No. 2733**

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**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

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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 introduced, 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 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 ~~Chapter 6 (commencing with~~  
20 ~~Section 3251) of Part 2 of Division 4~~ *this chapter*.

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

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

25 (2) The plan establishes a master trust account that is  
26 administered by the SBTPA, but requires each individual employer  
27 that is a client of the SBTPA to have a subtrust account that reflects  
28 that client’s employees’ specific plan contributions and is not  
29 commingled with any other funds. The master trust account shall  
30 be held in a federally insured bank.

31 (3) (A) If a voluntary plan does not provide for the assumption  
32 by an admitted disability insurer of the liability of the employer  
33 to pay the benefits afforded by the plan, the director shall not  
34 approve it unless the employer meets the financial security  
35 requirements of Section 3258.

36 (B) In addition to the security required by subparagraph (A),  
37 the director may require additional security from the SBTPA,  
38 consisting of the same types of financial instruments, and deposited

1 in the same manner as in Section 3258, in an amount determined  
2 by the director to be adequate to pay disability claims of the  
3 SBTPA's clients' employees should the client's subaccount or the  
4 financial security provided in subparagraph (A) be inadequate.

5 (4) (A) The single voluntary plan will be in effect for a period  
6 of not less than one year and, thereafter, continuously, unless the  
7 Director of Employment Development finds that the SBTPA has  
8 given notice of withdrawal of the plan. The notice filed by the  
9 SBTPA shall be filed in writing with the Director of Employment  
10 Development and shall be effective on the anniversary of the  
11 effective date of the plan next following the filing of the notice,  
12 but in any event shall not be less than 30 days from the time of the  
13 filing of the notice; except that the plan may be withdrawn on the  
14 operative date of any law increasing the benefit amounts provided  
15 by Sections ~~2563~~ 2653 and 2655 or the operative date of any  
16 change in the rate of worker contributions as determined by Section  
17 984, if notice of the withdrawal from the plan is transmitted to the  
18 Director of Employment Development not less than 30 days prior  
19 to the operative date of that law or change. If the plan is not  
20 withdrawn on the 30 days' notice because of the enactment of a  
21 law increasing benefits or because of a change in the rate of worker  
22 contributions as determined by Section 984, the plan shall be  
23 amended to conform to that increase or change on the operative  
24 date of the increase or change.

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

31 (5) The rights afforded to the covered employees are greater  
32 than those provided for in Chapter 2 (commencing with Section  
33 2625), including those provided for in Chapter 7 (commencing  
34 with Section 3300).

35 (6) The plan has been made available to all of the employees  
36 of the employer employed in this state or to all employees at any  
37 one distinct, separate establishment maintained by the employer  
38 in this state. "Employees" as used in this paragraph includes those  
39 individuals in partial or other forms of short-time employment and

1 employees not in employment as the director shall prescribe by  
2 authorized regulations.

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

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

10 (9) The client has consented to the plan and has authorized the  
11 SBTPA to make the payroll deductions required, if any, and deposit  
12 the proceeds in each client’s subtrust account.

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

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

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

22 (d) The department may adopt application forms and procedures  
23 as deemed necessary to ensure compliance with this section, and  
24 shall adopt any application forms and procedures within 60 days  
25 of the enactment of this section.

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

34 ~~(f) This section shall remain in effect through December 31,~~  
35 ~~2014, and as of that date is repealed.~~

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

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

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