

34:15-120.1

LEGISLATIVE HISTORY CHECKLIST

NJSA: 34:15-120.1

(Workers
compensation
"uninsured
employers fund"--
revitalize)

LAWS: 1988

CHAPTER: 25

Bill No: A1784

Sponsor(s): Charles and Foy

Date Introduced: Pre-filed

Committee: Assembly: Labor

Senate: Labor, Industry & Professions

Amended during passage: No Assembly Committee Substitute enacted

Date of Passage: Assembly: February 18, 1988

Senate: April 18, 1988

Date of Approval: May 27, 1988

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

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LEGISLATIVE HISTORY
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STATE OF NEW JERSEY
TREASURY

P.L. 1988, CHAPTER 25, approved May 27, 1988
Assembly Committee Substitute for
1988 Assembly No. 1784
CORRECTED COPY

1 AN ACT concerning the "uninsured employer's fund," amending
R.S. 34:15-79, and amending and supplementing P.L. 1966, c.
3 126.

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

7 1. Section 10 of P.L. 1966, c. 126 (C. 34:15-120.1) is amended
to read as follows:

9 10. a. There is hereby created a fund which shall be known as
the "uninsured employer's fund" to provide for the payment of
11 awards against uninsured defaulting employers who fail to provide
compensation to employees or their beneficiaries in accordance
13 with the provisions of [this act] the workers' compensation law,
R.S. 34:15-1 et seq.

15 The fund shall be administered, maintained, and disbursed by
the Commissioner of Labor as hereinafter provided.

17 b. (1) For the purpose of establishing and maintaining this
fund, the Commissioner of Labor shall impose on January 1, 1989
19 and on the first day of each year thereafter, except as provided
below, an annual surcharge upon each workers' compensation
21 policyholder and employer's liability insurance policyholder and
each self-insured employer insured pursuant to R.S. 34:15-77.
23 Each workers' compensation and employer's liability insurance
policyholder and self-insured employer shall be liable for
25 payment of the annual surcharge in accordance with the
provisions of this section and all regulations promulgated
27 pursuant thereto. The annual surcharge imposed under this
section shall apply to all workers' compensation and employer's
29 liability insurance policies written or renewed or, in the case of
self-insured employers, to coverage provided on or after January
31 1, 1989. However, the surcharge shall not apply: to any

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 reinsurance or retrocessional transaction; to the State or any
2 political subdivision thereof which acts as a self-insured
3 employer; or to any workers' compensation endorsement required
4 pursuant to section 1 of P.L. 1979, c. 380 (C. 17:36-5.29).

5 If the Commissioner of Labor determines, pursuant to
6 paragraph (2) of this subsection b., that the "uninsured
7 employer's fund" will have to its credit a sum in excess of
8 \$500,000.00 at the end of any calendar year, the annual surcharge
9 shall be suspended for the next following year and its collection
10 not resumed until the calendar year immediately following any
11 calendar year in which the balance in the fund is reduced below
12 \$500,000.00.

13 (2) For the calendar year 1989, the total amount of the
14 surcharge levied by the commissioner shall be \$500,000.00. On
15 September 1 of 1989 and of each year thereafter, the
16 Commissioner of Labor shall estimate the amount of benefits
17 that have been paid and will be paid from the "uninsured
18 employer's fund" during that calendar year, and shall calculate in
19 consultation with the Commissioner of Insurance, the total
20 amount of the annual surcharge for the "uninsured employer's
21 fund" to be levied during the next following calendar year upon
22 all workers' compensation and employer's liability insurance
23 policyholders and self-insured employers pursuant to paragraph
24 (1) of this subsection b. The total amount of the annual surcharge
25 shall equal 150% of the moneys estimated by the Commissioner
26 of Labor to be payable from the "uninsured employer's fund"
27 during the calendar year preceding the year during which the
28 annual surcharge will be imposed.

29 (3) The total amount of the annual surcharge calculated
30 pursuant to paragraph (2) of this subsection b. shall be added to
31 the aggregate annual surcharge amount to be levied upon and
32 apportioned among all workers' compensation and employer's
33 liability policyholders and self-insured employers pursuant to R.S.
34 34:15-94, and be levied and apportioned in the same manner as
35 the annual surcharge for the Second Injury Fund as provided in
36 R.S. 34:15-94. The surcharge to be collected from policyholders
37 and self-insured employers pursuant to this section shall,

1 however, be stated separately on the policy or billing statement
 3 and the amount of the surcharge as applied pursuant to this
 section shall not be subject to reduction for special adjustment
 and supplemental benefits paid or payable under the workers'
 5 compensation law, R.S. 34:15-1 et seq.

(4) As used in this subsection, "policyholder" means a holder of
 7 a workers' compensation and employer's liability insurance
policy insured by an insurer that is a domestic, foreign or alien
 9 mutual association or stock company writing workers'
compensation or employer's liability insurance on risks located in
 11 this State and subject to premium taxes pursuant to P.L. 1945, c.
132 (C. 54:18A-1). "Self-insured employer" means an employer
 13 which self-insures for workers' compensation or employer's
liability insurance pursuant to the provisions of R.S. 34:15-77.

(5) All moneys collected pursuant to this section shall be
 15 deposited in the "uninsured employer's fund." Collection of the
 17 annual surcharge shall be under the authority of the
Commissioner of Labor as defined in R.S. 34:15-94.

c. [the director] The Director of the Division of Workers'
 19 Compensation upon rendering a decision with respect to any
 21 claim for compensation under chapter 15 of Title 34 of the
Revised Statutes that the employer liable therefor has failed to
 23 secure the payment of compensation with respect [thereto] to a
claim in accordance with [section] R.S. 34:15-71 or [section] R.S.
 25 34:15-72 [of the Revised Statutes], shall impose [an assessment in
the sum] a penalty of [\$150.00] \$1,000.00 against the employer
 27 and direct its payment into the "uninsured employer's fund" in
connection with each such claim. The director shall also impose
 29 an additional assessment of 15% of the award or awards made in
each [such] claim[,such additional assessment not to]. This
 31 additional assessment shall not exceed, however, the sum of
[\$1,500.00] \$5,000.00 in any one claim, and shall [direct that such
 33 additional assessment also] be paid into the "uninsured
employer's fund."

If the employer [shall fail] fails to pay these assessments into
 35 the fund within 10 days after date of mailing of notice thereof to
 37 him, [such default] this shall constitute a default in payment of
 compensation due pursuant to the provisions of [section 40 of

1 this] the workers' compensation law, R.S. 34:15-1 et seq., and
judgment therefor shall be entered in accordance therewith[, all
3 other provisions of said section to be deemed applicable with
respect thereto, except to the extent that said provisions may be
5 clearly inconsistent with the provisions of this section].

All sums collected from an uninsured defaulting employer with
7 respect to any claim for compensation referred to in this section
but not payable from the fund, whether such collection is made
9 prior or subsequent to entry of judgment against [such] the
employer, shall be deemed in payment of and applicable first in
11 satisfaction of any compensation and benefits due from [such] the
employer with respect to [such] the claim and security demand, if
13 any, in connection therewith and only when [such] the obligations
are satisfied in full shall the balance of said sums collected, if
15 any, be deemed payment in satisfaction of and applicable to the
assessments above prescribed in this section.

17 All sums recovered from uninsured defaulting employers on
judgments entered for failure to pay assessments as hereinafter
19 provided and for failure to pay compensation and benefits which
were paid from the [fund herein created,] "uninsured employer's
21 fund," shall upon [such] recovery be paid into [said] that fund.
(cf: P.L. 1966, c. 126, s. 10).

23 2. Section 11 of P.L. 1966, c. 126 (C. 34:15-120.2) is amended
to read as follows:

25 11. a. In any case in which a claim for compensation is filed
pursuant to the provisions of [chapter 15 of Title 34 of the
27 Revised Statutes] the workers' compensation law, R.S. 34:15-1 et
seq., and the employer has failed to secure the payment of
29 compensation as required by [section] R.S. 34:15-71 or [section]
R.S. 34:15-72 [of the Revised statutes] and to make payment of
31 compensation according to the terms of any award within 45 days
thereafter and fails or refuses to deposit with the director within
33 10 days after demand the commuted or estimated value of the
compensation payable under the award as security for prompt and
35 convenient payment of [such] compensation periodically as it
accrues, then [and in such event], unless a notice of appeal has
37 been timely filed, the award shall be payable out of the
"uninsured [employers' fund," but no extra compensation or
39 death benefit pursuant to section 34:15-10 shall be payable from
the] employer's fund."

1 b. Benefit payments from the "uninsured employer's fund"
2 may include:

3 (1) Compensation for reasonable medical expenses covered by
4 the workers' compensation law, R.S. 34:15-1 et seq.; and

5 (2) Compensation for temporary disability as provided in
6 subsection a. of R.S. 34:15-12.

7 c. Benefit payments from the "uninsured employer's fund"
8 shall not include:

9 (1) Any compensation not included in the award or judgment
10 upon which a claim against the fund is made;

11 (2) Extra compensation or death benefits pursuant to R.S.
12 34:15-10.

13 d. Temporary disability benefits paid from the "uninsured
14 employers fund" shall be offset or reduced by an amount equal to
15 the amount of disability benefits received by the claimant
16 pursuant to the federal "Old-Age, Survivors' and Disability
17 Insurance Act" (42 U.S.C. § 401 et al.).

18 e. Benefits shall be paid to a claimant from the "uninsured
19 employer's fund" only if the claimant: (1) was, at the time of the
20 injury or death, an employee performing service for an employer
21 outside of casual employment as defined in R.S. 34:15-36; and (2)
22 did not recover full compensation for reasonable medical
23 expenses and temporary disability benefits from the uninsured
24 defaulting employer.

25 (cf: P.L. 1966, c. 126, s. 11)

26 3. Section 13 of P.L. 1966, c. 126 (C. 34:15-120.4) is amended
27 to read as follows:

28 a. After an award has been entered against an employer for
29 compensation under any provision of the workers' compensation
30 law, R.S. 34:15-1 et seq., and the Director of the Division of
31 Workers' Compensation has filed an order for payment of
32 compensation and assessments with the Clerk of the Superior
33 Court pursuant to section 12 of P.L. 1966, c. 126 (C. 34:15-120.3)
34 as a result of the employer's failure to provide lawful
35 compensation, the claimant may apply to the Commissioner of
36 Labor for compensation from the "uninsured employer's fund" in
37 accordance with the procedures established by the Commissioner
38 of Labor pursuant to section 16 of P.L. 1966, c. 126 (C.
39 34:15-120.7).

1 **b. The Commissioner of Labor is charged with the**
 2 **conservation of the assets of the "uninsured employer's fund."**
 3 Notwithstanding the provisions of any other section of this act,
 4 no payments shall be made from the [uninsured employers'] fund
 5 except upon application to and approval by the [Commissioner of
 6 Labor and Industry] commissioner. Review of any decision by the
 7 commissioner shall be in accordance with [section] R.S. 34:15-66
 8 [of the Revised Statutes].

9 **c. The Commissioner of Labor shall have the authority to**
 10 **establish rules for the review of claims against the "uninsured**
 11 **employer's fund" and hire and reimburse medical and other**
 12 **expert witnesses that are necessary to a proper conservation and**
 13 **defense of the moneys in the fund.**

14 **d. Upon being notified by the Commissioner of Labor that a**
 15 **decision of the commissioner regarding claims against the**
 16 **"uninsured employer's fund" is being appealed pursuant to R.S.**
 17 **34:15-66, the Attorney General, or his designee, shall defend the**
 18 **fund.**

19 **e. The Commissioner of Labor may also employ such**
 20 **employees as may be required to maintain and conserve the**
 21 **"uninsured employer's fund," and may also employ legal counsel**
 22 **to represent the fund and conduct investigations on behalf of the**
 23 **fund.**

24 [In no event, however, shall any payments be made from the
 25 fund until the total amount therein exceeds \$100,000.00, and
 26 thereafter only to the extent of the amount in the fund exceeding
 27 \$100,000.00, and, in any case, only for injuries and deaths
 28 resulting therefrom occurring after the fund reaches \$100,000.00.]
 29 (cf: P.L. 1966, c. 126, s. 13)

30 4. Section 15 of P.L. 1966, c. 126 (C. 34:15-120.6) is amended
 31 to read as follows:

32 15. The commissioner shall annually submit an accounting of
 33 the "uninsured employer's fund" to the State Treasurer and to
 34 the appropriations and labor committees of both houses of the
 35 State Legislature. The report to the Legislature shall include the
 36 following information: an estimate of the total amount of
 37 benefits paid from the fund in the preceding calendar year; an
 38 estimate of the benefits that may be paid from the fund in the
 39 current calendar year; a determination of the average cost to
 40 employers in the State, on a per employee basis, of providing

1 benefits through the "uninsured employer's fund;" and a
2 determination of the amount of money drawn from the fund
3 during the preceding calendar year for administrative purposes
4 pursuant to section 8 of P.L. , c. (C.) (now pending before
5 the Legislature as the bill). Payments to applicants from [said]
6 the fund shall be made by the State Treasurer upon warrants of
7 the Commissioner of Labor [and Industry].
(cf: P.L. 1966, c. 126, s. 15)

9 5. Section 16 of P.L. 1966, c. 126 (C. 34:15-120.7) is amended
to read as follows:

11 16. The commissioner may make all [necessary] rules and
12 regulations necessary for the processing and payment of
13 compensation out of the "uninsured [employers'] employer's
14 fund."

15 The commissioner shall promulgate, in accordance with the
16 "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1
17 et seq.), regulations to establish and administer an application
18 and review process for claims made against the fund.

19 (cf: P.L. 1966, c. 126, s. 16)

21 6. Section 17 of P.L. 1966, c. 126 (C. 34:15-120.8) is amended
to read as follows:

23 17. The liability of the "uninsured [employers'] employer's
24 fund" and the State with respect to payment of any
25 compensation, benefits, expenses, fees for disbursements properly
26 chargeable against the fund shall be limited to the assets in the
27 fund as exceed ~~[\$100,000.00]~~ \$50,000.00, and the fund and the
28 State shall not otherwise in any way or manner be liable for the
29 making of any such payment.

29 (cf: P.L. 1966, c. 126, s. 17)

31 7. (New section) If an employer fails to provide compensation
32 to an employee or his beneficiaries as required by chapter 15 of
33 Title 34 of the Revised Statutes, the employee, who has sustained
34 a compensable injury or died as a result of his employment, or his
35 beneficiaries may bring an action against the employer to recover
36 all or part of any damages and costs sustained by the employee
37 for any injury or death which has been deemed compensable under
38 the workers' compensation law, R.S. 34:15-1 et seq., and for
39 which the employee or his estate has not received compensation
from the "uninsured employer's fund."

1 8. (New section) In any fiscal year during which benefit
2 payments are made from the "uninsured employer's fund," the
3 Commissioner of Labor shall apply an amount equal to \$100.00
4 for each employee to whom such benefits have been paid from
5 the fund toward the expenses of the Department of Labor arising
6 from the administration of those benefit payments and the fund.
7 However, the total amount withdrawn from the fund to cover
8 administrative expenses shall not exceed \$10,000.00 during any
9 fiscal year.

10 9. (New section) Notwithstanding the provisions of any other
11 law, the Division of Workers' Compensation shall use every
12 available administrative means to ensure that benefit payments
13 from the "uninsured employer's fund" are paid only to individuals
14 who meet the eligibility requirements of the workers'
15 compensation law, R.S. 34:15-1 et seq., and that persons who are
16 required to make payments pursuant to the workers'
17 compensation law have provided lawful compensation and paid
18 any penalty, fine, or assessment imposed pursuant to that law.

19 10. (New section) The burden shall be upon the claimant to
20 immediately notify in writing the Director of the Division of
21 Workers' Compensation of any increase or decrease in his income
22 that may affect his eligibility for benefits payable from the
23 "uninsured employer's fund." 10 days after notice has been given
24 to the claimant and the Attorney General, the director may
25 modify or terminate an award payable from the fund as
26 conditions may require. Any payment to a claimant pursuant to
27 this 1988 amendatory and supplementary act which is later
28 determined by the Commissioner of Labor to have been procured
29 by fraud, mistake, or an unreported change in condition, shall be
30 recovered from the claimant and deposited in the fund.

31 11. (New section) The Commissioner of Labor shall, on behalf
32 of the "uninsured employer's fund," exhaust all remedies at law
33 against the uninsured delinquent employer of the claimant to
34 collect the amount of any award to the claimant paid by the fund.

35 12. (New section) Nothing in this act, P.L. , c. (C.)
36 (now pending before the Legislature as this bill), shall affect the
37 obligations of insurance carriers or self-insured employers
38 imposed by any other section of the workers' compensation law,
39 R.S. 34:15-1 et seq.

1 13. R.S. 34:15-79 is amended to read as follows:

3 34:15-79. An employer who ~~[shall fail]~~ willfully fails to provide
5 the protection prescribed in this article shall be guilty of a
7 ~~[misdemeanor and upon conviction thereof shall be punished by a~~
9 ~~fine of not more than \$1,000.00 or by imprisonment for not more~~
11 ~~than 60 days or by both such fine and imprisonment, and in] crime~~
13 ~~of the fourth degree. In cases where a [workmen's] workers'~~
15 ~~compensation award in the Division of [Workmen's] Workers'~~
17 ~~Compensation of New Jersey against the defendant is paid at the~~
19 ~~time of the sentence, the court may suspend sentence upon [such]~~
21 ~~that defendant and place him on probation for any period with an~~
23 ~~order to pay [said] the delinquent compensation award to the~~
claimant through the probation office of the county. Where the
employer is a corporation, the president, secretary, and the
treasurer thereof who are actively engaged in the corporate
business shall be liable for failure to secure the protection
prescribed by this article. Any contractor placing work with a
subcontractor shall, in the event of the subcontractor's failing to
carry [workmen's] workers' compensation insurance as required
by this article, become liable for any compensation which may be
due an employee or the dependents of a deceased employee of a
subcontractor. The contractor shall then have a right of action
against the subcontractor for reimbursement.

25 All fines collected under the terms of this [clause] section shall
27 be paid to the State Treasurer and credited on the records of the
29 State Comptroller to the account of the [Rehabilitation
Commission for Physically Handicapped Persons] Division of
Vocational Rehabilitation Services in the Department of Labor,
to be used in carrying out the provisions of [chapter 16 of this
Title 34:16-1, et seq.] P.L. 1955, c. 64 (C. 34:16-20 et seq.).

31 The [director] Director of the Division of Workers'
33 Compensation, or any officer or employee of the division
35 designated by him, upon finding that an employer has failed for a
37 period of not less than 10 consecutive days to make the provisions
39 for payment of compensation required by [sections] R.S. 34:15-71
and R.S. 34:15-72 [of this Title], may impose upon [such] that
employer, in addition to all other penalties, fines or assessments
provided for in chapter 15 of Title 34 of the Revised Statutes or
in any supplement thereto, an assessment in the amount of

1 ~~[\$25.00]~~ \$1,000.00 and when ~~[such]~~ the period exceeds 20 days, an
3 additional assessment of ~~[\$25.00]~~ \$1,000.00 for each period of 10
5 days thereafter~~], but no employer shall be assessed more than~~
7 \$100.00 at any one time]. All assessments under this act shall be
collectible in a court of competent jurisdiction in a summary civil
proceeding and shall be paid into the "uninsured [employers']
employer's fund."

(cf: P.L. 1966, c. 126, s. 8)

9 14. This act shall take effect immediately but shall remain
inoperative until the enactment into law of Assembly Bill No.
11 2210 of 1988, and shall apply only to compensable injuries or
deaths occurring on or after the operative date of this act.

13

15 **LABOR AND EMPLOYMENT**

Workers' Compensation

17

 Revitalizes the "uninsured employer's fund" for workers'
19 compensation.

ASSEMBLY, No. 1784
STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel
PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Assemblymen CHARLES and FOY

1 AN ACT concerning the funding base and benefit system of the
2 "uninsured employer's fund," amending R.S. 34:15-79 and
3 amending and supplementing P.L. 1966, c.126.

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

7 1. Section 10 of P.L. 1966, c. 1-26 (C.34:15-120.1) is
8 amended to read as follows:

9 10. a. There is hereby created a fund which shall be known as
10 the "uninsured employer's fund" to provide for the payment of
11 awards against uninsured defaulting employers who fail to
12 provide compensation to employees or their beneficiaries in
13 accordance with the provisions of [this act] the workers'
14 compensation act, R.S. 34:15-1 et seq.

15 The fund shall be administered, maintained, and disbursed by
16 the Commissioner of Labor as hereinafter provided.

17 b. (1) For the purpose of establishing and maintaining this
18 fund, the Commissioner of Labor shall impose on January 1, 1988
19 and on the first day of each year thereafter, except as provided
20 below, an annual surcharge upon each workers' compensation
21 policyholder and employer's liability insurance policyholder
22 insured pursuant to R.S. 34:15-78 and each self-insured
23 employer insured pursuant to R.S. 34:15-77. Each workers'
24 compensation and employer's liability insurance policyholder
25 and self-insured employer shall be liable for payment of the
26 annual surcharge in accordance with the provisions of this
27 section and all regulations promulgated pursuant thereto. The
28 annual surcharge imposed under this section shall apply to all
29 workers' compensation and employer's liability insurance

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 policies written or renewed or, in the case of self-insured
2 employers, to coverage provided on or after January 1, 1988.
3 The surcharge shall not apply, however, to any reinsurance or
4 retrocessional transaction, to any workers' compensation or
5 employer's liability coverage provided by the State or any
6 political subdivision thereof or to any workers' compensation
7 endorsement required pursuant to section 1 of P.L. 1979, c.380
8 (C.17:36-5.29).

9 If the Commissioner of Labor determines, pursuant to
10 paragraph (2) of this subsection b., that the "uninsured
11 employer's fund" will have to its credit a sum in excess of
12 \$500,000.00 at the end of any calendar year, the annual
13 surcharge shall be suspended for the ensuing calendar year and
14 its collection not resumed until the balance in the fund is
15 reduced below \$500,000.00.

16 (2) On September 1 of 1987 and of each year thereafter, the
17 Commissioner of Labor shall estimate the amount of benefits
18 that have been paid and will be paid from the "uninsured
19 employer's fund" during that calendar year, and shall calculate
20 in consultation with the Commissioner of Insurance, the total
21 amount of the annual surcharge for the "uninsured employer's
22 fund" to be imposed during the ensuing calendar year upon all
23 workers' compensation and employer's liability insurance
24 policyholders and self-insured employers pursuant to paragraph
25 (1) of this subsection b. The total amount of the annual
26 surcharge shall equal 150% of the moneys estimated by the
27 Commissioner of Labor to be payable from the "uninsured
28 employer's fund" during the calendar year preceding the year
29 during which the annual surcharge will be imposed.

30 (3) The total amount of the annual surcharge calculated
31 pursuant to paragraph (2) of this subsection b. shall be
32 apportioned among all workers' compensation and employer's
33 liability insurance policyholders and self-insured employers in
34 the State at the rate prescribed by this paragraph. Each
35 policyholder and self-insured employer shall be liable to pay as
36 an annual surcharge that percentage of the total amount of the
37 annual surcharge imposed upon all policyholders and self-insured
employers that is equal to the proportion that the policyholder's

1 net direct written premiums or the self-insured employer's
2 estimated premiums bear to the estimated aggregate net direct
3 written premiums of all policyholders and estimated premiums
4 of all self-insured employers on risks located within this State
5 for the calendar year during which the surcharge is imposed.
6 The estimated premiums of each self-insured employer shall be
7 calculated in accordance with the formula prescribed for the
8 estimation of written premiums of self-insured employers under
9 R.S. 34:15-94.

10 As used in this paragraph, "policyholder" means a workers'
11 compensation and employer's liability insurance policyholder.

12 (4) The annual surcharge imposed pursuant to this subsection
13 b. shall be collected simultaneously with the annual surcharge
14 imposed upon workers' compensation and employer's liability
15 insurance policyholders and self-insured employers pursuant to
16 R.S. 34:15-94. All moneys collected pursuant to this section
17 shall be deposited in the "uninsured employer's fund."
18 Collection of the annual surcharge shall be under the authority
19 of the Commissioner of Labor as defined in R.S. 34:15-94, and
20 shall be conducted in the manner prescribed in R.S. 34:15-94.

21 c. [the director] The Director of the Division of Workers'
22 Compensation, upon rendering a decision with respect to any
23 claim for compensation under chapter 15 of Title 34 of the
24 Revised Statutes that the employer liable therefor has failed to
25 secure the payment of compensation with respect [thereto] to a
26 claim in accordance with [section] R.S. 34:15-71 or [section]
27 R.S. 34:15-72 [of the Revised Statutes], shall imposed [an
28 assessment in the sum] a penalty of [\$150.00] \$1,000.00 against
29 the employer and direct its payment into the "uninsured
30 employer's fund" in connection with each such claim. The
31 director shall also impose an additional assessment of 15% of
32 the award or awards made in each [such] claim[,such additional
33 assessment not to]. This additional assessment shall not exceed,
34 however, the sum of [\$1,500.00] \$5,000.00 in any one claim, and
35 shall [direct that such additional assessment also] be paid into
36 the "uninsured employer's fund."

37 If the employer [shall fail] fails to pay these assessments into
the fund within 10 days after date of mailing of notice thereof

1 to him, [such default] this shall constitute a default in payment
2 of compensation due pursuant to the provisions of [section 40 of
3 this] the workers' compensation act, R.S. 34:15-1 et seq., and
4 judgment therefor shall be entered in accordance therewith[, all
5 other provisions of said section to be deemed applicable with
6 respect thereto, except to the extent that said provisions may
7 be clearly inconsistent with the provisions of this section].

8 All sums collected from an uninsured defaulting employer
9 with respect to any claim for compensation referred to in this
10 section but not payable from the fund, whether such collection
11 is made prior or subsequent to entry of judgment against [such]
12 the employer, shall be deemed in payment of and applicable first
13 in satisfaction of any compensation and benefits due from [such]
14 the employer with respect to [such] the claim and security
15 demand, if any, in connection therewith and only when [such] the
16 obligations are satisfied in full shall the balance of said sums
17 collected, if any, be deemed payment in satisfaction of and
18 applicable to the assessments above prescribed in this section.

19 All sums recovered from uninsured defaulting employers on
20 judgments entered for failure to pay assessments as hereinafter
21 provided and for failure to pay compensation and benefits which
22 were paid from the [fund herein created,] "uninsured employer's
23 fund," shall upon [such] recovery be paid into [said] that fund.

24 d. As used in this section, "net direct premiums" means gross
25 workers' compensation and employer's liability insurance
26 premiums written, less return premiums thereon and dividends
27 credited or paid policyholders.

28 2. Section 11 of P.L. 1966, c. 126 (C.34:15-120.2) is amended
29 to read as follows:

30 11. a. In any case in which a claim for compensation is filed
31 pursuant to the provisions of [chapter 15 of Title 34 of the
32 Revised Statutes] the workers' compensation act, R.S. 34:15-1
33 et seq. and the employer has failed to secure the payment of
34 compensation as required by [section] R.S. 34:15-71 or [section]
35 R.S. 34:15-72 [of the Revised statutes] and to make payment

1 of compensation according to the terms of any award within 45
2 days thereafter and fails or refuses to deposit with the director
3 within 10 days after demand the commuted or estimated value
4 of the compensation payable under the award as security for
5 prompt and convenient payment of [such] compensation
6 periodically as it accrues, then [and in such event], unless a
7 notice of appeal has been timely filed, the award shall be
8 payable out of the "uninsured [employers' fund," but no extra
9 compensation or death benefit pursuant to section 34:15-10 shall
10 be payable from the] employer's fund."

11 b. Benefit payments from the "uninsured employer's fund"
12 may include:

13 (1) Compensation for reasonable medical expenses covered by
14 the workers' compensation act, R.S. 34:15-1 et seq.; and

15 (2) Compensation for temporary disability as provided in
16 subsection a. of R.S. 34:15-12.

17 c. Benefit payments from the "uninsured employer's fund"
18 shall not include:

19 (1) Any compensation not included in the award of judgment
20 upon which a claim against the fund is made;

21 (2) Extra compensation or death benefits pursuant to R.S.
22 34:15-10.

23 d. Temporary disability benefits paid from the "uninsured
24 employers fund" shall be offset or reduced by an amount equal
25 to the amount of disability benefits received by the claimant
26 pursuant to the federal Old-Age Survivors' and Disability
27 Insurance Act (42 U.S.C. § 401 et al.).

28 e. Benefits shall be paid to a claimant from the "uninsured
29 employer's fund" only if the claimant: (1) Was, at the time of
30 the injury or death, an employee performing service for an
31 employer outside of casual employment as defined in R.S.
32 34:15-36; and (2) Did not recover full compensation for
33 reasonable medical expenses and temporary disability benefits
34 from the uninsured defaulting employer.

35 3. Section 13 of P.L. 1966, c. 126 (C.34 :15-120.4) is amended
36 to read as follows:

37 a. After an award has been entered against an employer for
38 compensation under any provision of the workers' compensation
39 act, R.S. 34:15-1 et seq., and the Director of the Division of

1 Workers' Compensation has filed an order for payment of
2 compensation and assessments with the Clerk of the Superior
3 Court pursuant to section 12 of P.L. 1966, c. 126 (C.34:15-120.3)
4 as a result of the employer's failure to provide lawful
5 compensation, the claimant may apply to the Commissioner of
6 Labor for compensation from the uninsured employer's fund" in
7 accordance with the procedures established by the
8 Commissioner of Labor pursuant to section 16 of P.L. 1966, c.
9 126 (C.34:15-120.7).

10 b. The Commissioner of Labor is charged with the
11 conservation of the assets of the "uninsured employer's fund."
12 Notwithstanding the provisions of any other section of this act,
13 no payments shall be made from the [uninsured employers'] fund
14 except upon application to and approval by the [Commissioner of
15 Labor and Industry] commissioner. Review of any decision by
16 the commissioner shall be in accordance with [section] R.S.
17 34:15-66 [of the Revised Statutes].

18 c. The Commissioner of Labor shall have the authority to
19 establish rules for the review of claims against the "uninsured
20 employer's fund" and hire and reimburse medical and other
21 expert witnesses that are necessary to a proper conservation and
22 defense of the moneys in the fund.

23 d. Upon being notified by the Commissioner of Labor that a
24 decision of the commissioner regarding claims against the
25 "uninsured employer's fund" is being appealed pursuant to R.S.
26 34:15-66, the Attorney General, or his designee, shall defend the
27 fund.

28 e. The Commissioner of Labor may also employ such
29 employees as may be required to maintain and conserve the
30 "uninsured employer's fund," and may also employ legal counsel
31 to represent the fund and conduct investigations on behalf of the
32 fund.

33 [In no event, however, shall any payments be made from the
34 fund until the total amount therein exceeds \$100,000.00, and
35 thereafter only to the extent of the amount in the fund
36 exceeding \$100,000.00, and, in any case, only for injuries and
37 deaths resulting therefrom occurring after the fund reaches
38 \$100,000.00]

39 4. Section 15 of P.L. 1966, c. 126 (C.34:15-120.6) is amended
to read as follows:

1 15. The commissioner shall annually submit an accounting of
2 the "uninsured employer's fund" to the State Treasurer and to
3 the appropriations and labor committees of both houses of the
4 State Legislature. The report to the Legislature shall include
5 the following information: an estimate of the total amount of
6 benefits paid from the fund in the preceding calendar year; an
7 estimate of the total amount of benefits paid from the fund in
8 the preceding calendar year; an estimate of the benefits that
9 may be paid from the fund in the current calendar year; a
10 determination of the average cost to employers in the State, on
11 a per employee basis, of providing benefits through the
12 "uninsured employer's fund"; and a determination of the amount
13 of money drawn from the fund during the preceding calendar
14 year for administrative purposes pursuant to section 8 of
15 P.L. _____, c. (C. _____) (now pending before the
16 Legislature as the bill). Payments to applicants from [said] the
17 fund shall be made by the State Treasurer upon warrants of the
18 Commissioner of Labor [and Industry].

19 5. Section 16 of P.L. 1966, c. 126 (C.34:15-120.7) is amended
20 to read as follows:

21 16. The commissioner may make all [necessary] rules and
22 regulations necessary for the processing and payment of
23 compensation out of the "uninsured [employers] employer's
24 fund."

25 The commissioner shall promulgate, in accordance with the
26 "Administrative Procedure Act," P.L. 1968, c. 410 (C.52:14B-1
27 et seq.), regulations to establish and administer an application
28 and review process for claims made against the fund.

29 6. Section 17 of P.L. 1966, c. 126 (C.34:15-120.8) is amended
30 to read as follows:

31 17. The liability of the "uninsured [employers'] employer's
32 fund" and the State with respect to payment of any
33 compensation, benefits, expenses, fees for disbursements
34 properly chargeable against the fund shall be limited to the
35 assets in the fund as exceed [~~\$100,000.00~~] \$50,000.00, and the
36 fund and the State shall not otherwise in any way or manner be
37 liable for the making of any such payment.

1 7. (New section) If an employer fails to provide
3 compensation to an employee or his beneficiaries as required by
5 chapter 15 of Title 34 of the Revised Statutes, the employee,
7 who has sustained a compensable injury or died as a result of his
9 employment, or his beneficiaries may bring an action against the
11 employer to recover all or part of any damages and costs
sustained by the employee for any injury or death which has
been deemed compensable under the workers' compensation act,
R.S. 34:15-1 et seq., and for which the employee or his estate
has not received compensation from the "uninsured employer's
fund."

13 8. (New section) In any fiscal year during which benefit
15 payments are made from the "uninsured employer's fund" the
17 Commissioner of Labor shall apply an amount equal to \$100.00
19 for each employee to whom such benefits have been paid from
the fund toward the expenses of the Department of Labor
arising from the administration of those benefit payments and
the fund. However, the total amount withdrawn from the fund
to cover administrative expenses shall not exceed \$10,000.00
during any fiscal year.

21 9. (New section) Notwithstanding the provisions of any other
23 law, the Division of Workers' Compensation shall use every
25 available administrative means to ensure that benefit payments
27 from the "uninsured employer's fund" are paid only to
29 individuals who meet the eligibility requirements of the
Workers' compensation act, R.S. 34:15-1 et seq., and that
persons who are required to make payments pursuant to the
workers' compensation act have provided lawful compensation
and paid any penalty, fine, or assessment imposed pursuant to
that act.

31 10. (New section) The burden shall be upon the claimant to
33 immediately notify the Director of the Division of Workers'
35 Compensation in writing of any increase or decrease in his
37 income that may affect his eligibility for benefits payable from
the "uninsured employer's fund." 10 days after notice has been
given to the claimant and the Attorney General, the director may
modify or terminate an award paid from the fund as conditions

1 may require. Any payment to a claimant pursuant to this article
 2 which is later determined by the Commissioner of Labor to have
 3 been procured by fraud, mistake, or an unreported change in
 4 condition, shall be recovered from the claimant and deposited in
 5 the fund.

6 11. (New section) The Commissioner of Labor shall, on
 7 behalf of the "uninsured employer's fund," exhaust all remedies
 8 at law against the uninsured delinquent employer of the
 9 claimant to collect the amount of any award to the claimant
 10 paid by the fund.

11 12. (New section) Nothing in this act, P.L. , c.
 12 (C.) (now pending before the Legislature as this bill),
 13 shall affect the obligations of insurance carriers or self-insured
 14 employers imposed by any other section of the workers'
 15 compensation act, R.S. 34:15-1 et seq.

16 13. R.S. 34:15-79 is amended to read as follows:

17 34:15-79. An employer who [shall fail] willfully fails to
 18 provide the protection prescribed in this article shall be guilty
 19 of a [misdemeanor] crime of the fourth degree, and upon
 20 conviction thereof shall be punished by a fine of not [more] less
 21 than \$1,000.00 or by imprisonment for not more than [60] 90
 22 days or by both [such] the fine and imprisonment[, and in]. In
 23 cases where a [workmen's] workers' compensation award in the
 24 Division of [Workmen's] Workers' Compensation of New Jersey
 25 against the defendant is paid at the time of the sentence, the
 26 court may suspend sentence upon [such] that defendant and
 27 place him on probation for any period with an order to pay [said]
 28 the delinquent compensation award to the claimant through the
 29 probation office of the county. Where the employer is a
 30 corporation, the president, secretary, and the treasurer thereof
 31 who are actively engaged in the corporate business shall be
 32 liable for failure to secure the protection prescribed by this
 33 article. Any contractor placing work with a subcontractor shall,
 34 in the event of the subcontractor's failing to carry [workmen's]
 35 workers' compensation insurance as required by this article,
 36 become liable for any compensation which may be due an
 37 employee or the dependents of a deceased employee of a
 38 subcontractor. The contractor shall then have a right of action
 39 against the subcontractor for reimbursement.

1 All fines collected under the terms of this [clause] section
 shall be paid to the State Treasurer and credited on the records
 3 of the State Comptroller to the account of the [Rehabilitation
 Commission for Physically Handicapped Persons] Division of
 5 Vocational Rehabilitation Services in the Department of Labor,
 to be used in carrying out the provisions of [chapter 16 of this
 7 Title 34:16-1, et seq.] P.L. 1955, c. 64 (C.34:16-20 et seq.).

The [director] Director of the Division of Workers'
 9 Compensation, or any officer or employee of the division
 designated by him, upon finding that an employer has failed for
 11 a period of not less than 10 consecutive days to make the
 provisions for payment of compensation required by [sections]
 13 R.S. 34:15-71 and R.S. 34:15-72 [of this Title], may impose upon
 [such] that employer, in addition to all other penalties, fines or
 15 assessments provided for in chapter 15 of Title 34 of the
Revised Statutes or in any supplement thereto, an assessment in
 17 the amount of [\$25.00] \$1,000.00 and when [such] the period
 exceeds 20 days, an additional assessment of [\$25.00] \$1,000.00
 19 for each period of 10 days thereafter[, but no employer shall be
 assessed more than \$100.00 at any one time]. All assessments
 21 under this act shall be collectible in a court of competent
 jurisdiction in a summary civil proceeding and shall be aid into
 23 the "uninsured [employers'] employer's fund."

14. This act shall take effect immediately but shall remain
 25 inoperative until the enactment into law of Assembly Bill No.
 4089 of 1987, and shall apply only to compensable injuries or
 27 deaths occurring on or after the operative date of this act.

29

STATEMENT

31

This bill makes various changes in the funding base,
 33 administrative arrangements, and benefit system of the
 "uninsured employer's fund," a fund created within the State's
 35 workers' compensation act, R.S. 34:15-1 et seq., to provide
 benefit payments to injured workers or the beneficiaries of
 37 deceased workers whose employers fail to provide compensation
 as required by the workers' compensation act.

A1784

1 Under the bill, the "uninsured employer's fund" will receive
revenues from two primary sources: (1) an annual surcharge
3 upon each workers' compensation and employer's liability
insurance policyholder and self-insured employer in the State,
5 except the State and its political subdivisions; and (2) penalties
imposed upon uninsured defaulting employers. This bill will
7 become effective only upon the enactment of another bill
establishing a new financing system for the Second Injury Fund.

9 This bill also establishes new penalties for uninsured
delinquent employers who violate the workers' compensation
11 act. An employer who fails to provide lawful compensation is
subject under the substitute to a fine of now less than \$1,000.00,
13 or imprisonment for 90 days, or both. Under current law, the
employer is subject to a fine up to \$1,000.00, or imprisonment
15 for 60 days, or both. In addition to these fines and penalties, the
Director of the Division of Workers' Compensation may also
17 impose supplemental penalties and fines up to a maximum of
\$1,000.00 for compensation unpaid for a 10-day period and up to
19 maximum of \$1,000.00 for each 10-day period thereafter.
Current law permits penalties \$25.00 for these respective
21 periods. The director may also impose assessments ranging
between \$150.00 to \$1,500.00.

23 This bill also requires the Commissioner of Labor to conserve
and defend the assets of the fund, to establish a review
25 procedure for claims made against the fund, to hire legal and
medical experts to protect the fund, and to employ legal counsel
27 to represent the fund and conduct investigations on behalf of the
fund.

29 The bill further provides that the benefits payable from the
uninsured employer's fund will:

31 (1) Be limited to reasonable medical expenses and temporary
disability benefits;

33 (2) Not include death benefits or extra compensation for the
unlawful employment of minors;

35 (3) Be offset by any social security payments received by the
claimant; and

37 (4) Be payable only if the injury or death occurred in a type
of employment that was not casual and if the claimant did not
39 recover full compensation for reasonable medical expenses and
temporary disability benefits from the uninsured defaulting
41 employer.

1

LABOR AND EMPLOYMENT

Workers' Compensation

3

5

Revitalizes the "uninsured employer's fund" for workers' compensation.

ASSEMBLY LABOR COMMITTEE
STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR

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ASSEMBLY, No. 1784
STATE OF NEW JERSEY

DATED: JANUARY 28, 1988

The Assembly Labor Committee reports favorably Assembly Committee Substitute No. 1784.

This substitute makes various changes in the funding base, administrative arrangements, and benefit schedule of the "uninsured employer's fund," a fund created within the workers' compensation system to provide payments to workers whose employers fail to provide compensation as required by the workers' compensation law, R.S. 34:15-1 et seq.

Under the substitute the uninsured employer's fund will receive revenues from two sources: (1) an annual surcharge upon workers' compensation and employer's liability insurance policyholders and self-insured employers, except the State and its political subdivisions; and (2) penalties imposed upon uninsured or defaulting employers.

The annual surcharge created by the substitute is to be levied by the Commissioner of Labor on January 1 of 1989 and of each year thereafter, if the commissioner determines that the uninsured employer's fund will have a balance of \$500,000.00 or less at the end of the preceding calendar year. The total amount of the surcharge imposed on January 1st is to equal 150% of the moneys estimated by the commissioner to be payable from the fund during the next preceding calendar year. The annual surcharge is to be apportioned and collected in the same manner as the annual surcharge created by Assembly Bill No. 2210 of 1988. Under the substitute any policyholder, self-insured employer, or insurer failing to make a lawfully required report, payment, or transfer within 30 days of the stipulated deadline is subject to a penalty of 0.5% of the amount of the annual surcharge unreported, unpaid, or untransferred.

The substitute also increases the penalties for employers who fail to provide compensation or to provide the protection prescribed by the workers' compensation law. An employer who fails to secure compensation is subject under the substitute to a fine of not less than \$1,000.00, up to a maximum of \$5,000.00 in any one claim. (Under current law, the employer is subject to a fine up to \$150.00 up to a maximum of \$1,500.00 in any one claim.) In addition, the substitute changes the penalty for employers who fail to provide the protection required by the workers' compensation law. Under the substitute, an employer who willfully fails to provide protection prescribed by law is guilty of a crime of the fourth degree. (Under current law, the violation is deemed a misdemeanor, punishable by a fine of not more than \$1,000.00 or by imprisonment for not more than 90 days, or both.) The substitute also authorizes the Director of the Division of Workers' Compensation to impose supplemental penalties and fines, up to \$1,000.00, if an employer fails to make the provision for payment required by R.S. 34:15-71 and R.S. 34:15-72 for a 20-day period, and up to a maximum of \$1,000.00 for each 10-day period thereafter. (Current law permits penalties of \$25.00 for these respective periods.) All penalties and fines collectible under these provisions are to be deposited in the uninsured employer's fund.

The substitute further provides that the Commissioner of Labor shall conserve and defend the assets of the fund, establish a review procedure for claims made against the fund, hire legal and medical experts to protect the fund, and employ legal counsel to represent the fund and conduct investigations on behalf of the fund. The substitute requires the Division of Workers' Compensation to use every available administrative means to ensure that benefits payments from the fund are provided only to eligible individuals, and requires the recipient of those payments to notify the division in writing of any change in income that may affect the recipient's eligibility for compensation from the fund. If the Director of the Division of Workers' Compensation provides to the claimant and the Attorney General written notice of his determination to terminate or modify an award payable from the fund, the director may, after ten days, terminate or modify the award, as conditions may require.

Finally, the substitute specifies that the benefits payable from the uninsured employer's fund will:

- 1) Be limited to reasonable medical expenses and temporary disability benefits;
- 2) Not include death benefits;
- 3) Not include extra compensation for the unlawful employment of minors;
- 4) Be offset or reduced by social security payments received; and
- 5) Be payable only if the injury or death occurred in a type of employment that was not casual and the claimant has not recovered full compensation for reasonable medical expenses and temporary disability benefits from the uninsured defaulting employer.

The substitute will not become operative until enactment into law of Assembly Bill No. 2210 of 1988.

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 1784

STATE OF NEW JERSEY

DATED: FEBRUARY 29, 1988

This bill makes various changes in the funding base, administrative arrangements, and benefit schedule of the "uninsured employer's fund," a fund created within the workers' compensation system to provide payments to workers whose employers fail to provide compensation as required by the workers' compensation law, R.S. 34:15-1 et seq.

Under the bill the uninsured employer's fund will receive revenues from two sources: (1) an annual surcharge upon workers' compensation and employer's liability insurance policyholders and self-insured employers, except the State and its political subdivisions; and (2) penalties imposed upon uninsured or defaulting employers.

The annual surcharge created by the bill is to be levied by the Commissioner of Labor on January 1 of 1989 and of each year thereafter, if the commissioner determines that the uninsured employer's fund will have a balance of \$500,000.00 or less at the end of the preceding calendar year. The total amount of the surcharge imposed on January 1st is to equal 150% of the moneys estimated by the commissioner to be payable from the fund during the next preceding calendar year. The annual surcharge is to be apportioned and collected in the same manner as the annual surcharge created by Assembly Bill No. 2210 of 1988.

The bill specifies that the benefits payable from the uninsured employer's fund will:

- a. Be limited to reasonable medical expenses and temporary disability benefits;
- b. Not include death benefits;
- c. Not include extra compensation for the unlawful employment of minors;
- d. Be offset or reduced by social security payments received; and

- e. Be payable only if the injury or death occurred in a type of employment that was not casual and the claimant has not recovered full compensation for reasonable medical expenses and temporary disability benefits from the uninsured defaulting employer.

Currently the fund, if it has the money, will pay any of the benefits available to injured workers under the workers' compensation law, including medical expense benefits, permanent-partial disability benefits, permanent-total disability benefits, and temporary disability benefits.

The bill increases the penalties for employers who fail to provide compensation or to provide the protection prescribed by the workers' compensation law. An employer who fails to secure payment of compensation with respect to a claim is subject to a fine of \$1,000.00, plus an assessment of 15% of the award made in each claim, except the assessment cannot exceed \$5,000.00 for any one claim. Under current law, the employer is subject to fine of \$150.00, plus an assessment of 15% of the award made in each claim, except the assessment cannot exceed \$1,500.00 for any one claim. Under the bill the general penalty provision of the workers' compensation law, R.S. 34:15-79, is amended to provide that an employer who willfully fails to provide protection prescribed by the workers' compensation law is guilty of a crime of the fourth degree. Under current law, this violation is deemed a misdemeanor, punishable by a fine of not more than \$1,000.00 or by imprisonment for not more than 60 days, or both. As under current law, any fines collected are to be deposited with the Division of Vocational Rehabilitation Services in the Department of Labor. The bill also amends this same section to authorize the Director of the Division of Workers' Compensation to impose an assessment of \$1,000.00 if an employer fails to make the provision for payment required by R.S. 34:15-71 and R.S. 34:15-72 for a period of not less than 10 days or more than 20 days, and an assessment of \$1,000.00 for each 10-day period thereafter. Current law permits assessments of \$25.00 for these respective periods. The assessments collectible under these provisions are to be deposited in the uninsured employer's fund.

In addition to the fines and assessments set forth above, the bill provides that if an employer fails to provide compensation as required by the workers' compensation law, the employee or his beneficiaries may bring an action against the employer to recover damages and costs sustained by the employee for the compensable injury or death, unless the employee or his estate has received compensation from the uninsured employer's fund.

The bill further provides that the Commissioner of Labor shall conserve and defend the assets of the fund, establish a review procedure for claims made against the fund, hire legal and medical experts to protect the fund, and employ legal counsel to represent the fund and conduct investigations on behalf of the fund. The bill requires the Division of Workers' Compensation to use every available administrative means to ensure that benefit payments from the fund are provided only to eligible individuals, and requires the recipient of those payments to notify the division in writing of any change in income that may affect the recipient's eligibility for compensation from the fund. If the Director of the Division of Workers' Compensation provides to the claimant and the Attorney General written notice of his determination to terminate or modify an award payable from the fund, the director may, after ten days, terminate or modify the award, as conditions may require.

The Department of Labor is allowed to charge administrative expenses against the uninsured employer's fund at a rate of \$100.00 for each claim paid by the fund, with a limit of \$10,000.00 during any fiscal year.

The bill will not become operative until enactment into law of Assembly Bill No. 2210 of 1988.

ASSEMBLY, No. 1784

STATE OF NEW JERSEY

ADOPTED FEBRUARY 1, 1988

By Assemblymen CHARLES and FOY

1 AN ACT concerning the "uninsured employer's fund," amending
2 R.S. 34:15-79, and amending and supplementing P.L. 1966, c.
3 126.

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

7 1. Section 10 of P.L. 1966, c. 126 (C.34:15-120.1) is amended
8 to read as follows:

9 10. a. There is hereby created a fund which shall be known as
10 the "uninsured employer's fund" to provide for the payment of
11 awards against uninsured defaulting employers who fail to provide
12 compensation to employees or their beneficiaries in accordance
13 with the provisions of [this act] the workers' compensation law,
14 R.S. 34:15-1 et seq.

15 The fund shall be administered, maintained, and disbursed by
16 the Commissioner of Labor as hereinafter provided.

17 b. (1) For the purpose of establishing and maintaining this
18 fund, the Commissioner of Labor shall impose on January 1, 1989
19 and on the first day of each year thereafter, except as provided
20 below, an annual surcharge upon each workers' compensation
21 policyholder and employer's liability insurance policyholder and
22 each self-insured employer insured pursuant to R.S. 34:15-77.
23 Each workers' compensation and employer's liability insurance
24 policyholder and self-insured employer shall be liable for
25 payment of the annual surcharge in accordance with the
26 provisions of this section and all regulations promulgated
27 pursuant thereto. The annual surcharge imposed under this
28 section shall apply to all workers' compensation and employer's
29 liability insurance policies written or renewed or, in the case of
30 self-insured employers, to coverage provided on or after January
31 1, 1989. However, the surcharge shall not apply; to any

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 reinsurance or retrocessional transaction; to the State or any
2 political subdivision thereof which acts as a self-insured
3 employer, or to any political subdivision thereof or to any
4 workers' compensation endorsement required pursuant to section
5 1 of P.L. 1979, c. 380 (C. 17:36-5.29).

6 If the Commissioner of Labor determines, pursuant to
7 paragraph (2) of this subsection b., that the "uninsured
8 employer's fund" will have to its credit a sum in excess of
9 \$500,000.00 at the end of any calendar year, the annual surcharge
10 shall be suspended for the next following year and its collection
11 not resumed until the calendar year immediately following any
12 calendar year in which the balance in the fund is reduced below
13 \$500,000.00.

14 (2) For the calendar year 1989, the total amount of the
15 surcharge levied by the commissioner shall be \$500,000.00. On
16 September 1 of 1989 and of each year thereafter, the
17 Commissioner of Labor shall estimate the amount of benefits
18 that have been paid and will be paid from the "uninsured
19 employer's fund" during that calendar year, and shall calculate in
20 consultation with the Commissioner of Insurance, the total
21 amount of the annual surcharge for the "uninsured employer's
22 fund" to be levied during the next following calendar year upon
23 all workers' compensation and employer's liability insurance
24 policyholders and self-insured employers pursuant to paragraph
25 (1) of this subsection b. The total amount of the annual surcharge
26 shall equal 150% of the moneys estimated by the Commissioner
27 of Labor to be payable from the "uninsured employer's fund"
28 during the calendar year preceding the year during which the
29 annual surcharge will be imposed.

30 (3) The total amount of the annual surcharge calculated
31 pursuant to paragraph (2) of this subsection b. shall be added to
32 the aggregate annual surcharge amount to be levied upon and
33 apportioned among all workers' compensation and employer's
34 liability policyholders and self-insured employers pursuant to R.S.
35 34:15-94, and be levied and apportioned in the same manner as
36 the annual surcharge for the Second Injury Fund as provided in
37 R.S. 34:15-94. The surcharge to be collected from policyholders
and self-insured employers pursuant to this section shall,

1 however, be stated separately on the policy or billing statement
2 and the amount of the surcharge as applied pursuant to this
3 section shall not be subject to reduction for special adjustment
4 and supplemental benefits paid or payable under the workers'
5 compensation law, R.S. 34:15-1 et seq.

6 (4) As used in this subsection, "policyholder" means a holder of
7 a workers' compensation and employer's liability insurance
8 policy insured by an insurer that is a domestic, foreign or alien
9 mutual association or stock company writing workers'
10 compensation or employer's liability insurance on risks located in
11 this State and subject to premium taxes pursuant to P.L. 1945, c.
12 132 (C. 54:18A-1). "Self-insured employer" means an employer
13 which self-insures for workers' compensation or employer's
14 liability insurance pursuant to the provisions of R.S. 34:15-77.

15 (5) All moneys collected pursuant to this section shall be
16 deposited in the "uninsured employer's fund." Collection of the
17 annual surcharge shall be under the authority of the
18 Commissioner of Labor as defined in R.S. 34:15-94.

19 c. [the director] The Director of the Division of Workers'
20 Compensation upon rendering a decision with respect to any
21 claim for compensation under chapter 15 of Title 34 of the
22 Revised Statutes that the employer liable therefor has failed to
23 secure the payment of compensation with respect [thereto] to a
24 claim in accordance with [section] R.S. 34:15-71 or [section] R.S.
25 34:15-72 [of the Revised Statutes], shall impose [an assessment in
26 the sum] a penalty of [\$150.00] \$1,000.00 against the employer
27 and direct its payment into the "uninsured employer's fund" in
28 connection with each such claim. The director shall also impose
29 an additional assessment of 15% of the award or awards made in
30 each [such] claim[,such additional assessment not to]. This
31 additional assessment shall not exceed, however, the sum of
32 [\$1,500.00] \$5,000.00 in any one claim, and shall [direct that such
33 additional assessment also] be paid into the "uninsured
34 employer's fund."

35 If the employer [shall fail] fails to pay these assessments into
36 the fund within 10 days after date of mailing of notice thereof to
37 him, [such default] this shall constitute a default in payment of
compensation due pursuant to the provisions of [section 40 of

1 this] the workers' compensation law, R.S. 34:15-1 et seq., and
judgment therefor shall be entered in accordance therewith[, all
3 other provisions of said section to be deemed applicable with
respect thereto, except to the extent that said provisions may be
5 clearly inconsistent with the provisions of this section].

All sums collected from an uninsured defaulting employer with
7 respect to any claim for compensation referred to in this section
but not payable from the fund, whether such collection is made
9 prior or subsequent to entry of judgment against [such] the
employer, shall be deemed in payment of and applicable first in
11 satisfaction of any compensation and benefits due from [such] the
employer with respect to [such] the claim and security demand, if
13 any, in connection therewith and only when [such] the obligations
are satisfied in full shall the balance of said sums collected, if
15 any, be deemed payment in satisfaction of and applicable to the
assessments above prescribed in this section.

All sums recovered from uninsured defaulting employers on
17 judgments entered for failure to pay assessments as hereinafter
provided and for failure to pay compensation and benefits which
19 were paid from the [fund herein created,] "uninsured employer's
fund," shall upon [such] recovery be paid into [said] that fund.
21 (cf: P.L. 1966. c. 126 s. 10).

23 2. Section 11 of P.L. 1966, c. 126 (C. 34:15-120.2) is amended
to read as follows:

25 11. a. In any case in which a claim for compensation is filed
pursuant to the provisions of [chapter 15 of Title 34 of the
27 Revised Statutes] the workers' compensation law, R.S. 34:15-1 et
seq., and the employer has failed to secure the payment of
29 compensation as required by [section] R.S. 34:15-71 or [section]
R.S. 34:15-72 [of the Revised statutes] and to make payment of
31 compensation according to the terms of any award within 45 days
thereafter and fails or refuses to deposit with the director within
33 10 days after demand the commuted or estimated value of the
compensation payable under the award as security for prompt and
35 convenient payment of [such] compensation periodically as it
accrues, then [and in such event], unless a notice of appeal has
37 been timely filed, the award shall be payable out of the
"uninsured [employers' fund," but no extra compensation or

1 death benefit pursuant to section 34:15-10 shall be payable from
 the employer's fund."

3 b. Benefit payments from the "uninsured employer's fund"
may include:

5 (1) Compensation for reasonable medical expenses covered by
the workers' compensation law, R.S. 34:15-1 et seq.; and

7 (2) Compensation for temporary disability as provided in
subsection a. of R.S. 34:15-12.

9 c. Benefit payments from the "uninsured employer's fund"
shall not include:

11 (1) Any compensation not included in the award or judgment
upon which a claim against the fund is made;

13 (2) Extra compensation or death benefits pursuant to R.S.
34:15-10.

15 d. Temporary disability benefits paid from the "uninsured
employers fund" shall be offset or reduced by an amount equal to
the amount of disability benefits received by the claimant
pursuant to the federal "Old-Age, Survivors' and Disability
Insurance Act" (42 U.S.C. § 401 et al.).

17 e. Benefits shall be paid to a claimant from the "uninsured
employer's fund" only if the claimant: (1) Was, at the time of the
injury or death, an employee performing service for an employer
outside of casual employment as defined in R.S. 34:15-36; and (2)
Did not recover full compensation for reasonable medical
expenses and temporary disability benefits from the uninsured
defaulting employer.

21 (cf: P.L. 1966, c. 126, s. 11)

23 3. Section 13 of P.L. 1966, c. 126 (C. 34:15-120.4) is amended
 25 to read as follows:

27 a. After an award has been entered against an employer for
 29 compensation under any provision of the workers' compensation
 31 law, R.S. 34:15-1 et seq., and the Director of the Division of
 33 Workers' Compensation has filed an order for payment of
 35 compensation and assessments with the Clerk of the Superior
 37 Court pursuant to section 12 of P.L. 1966, c. 126 (C. 34:15-120.3)
 39 as a result of the employer's failure to provide lawful
compensation, the claimant may apply to the Commissioner of
Labor for compensation from the "uninsured employer's fund" in
accordance with the procedures established by the Commissioner

1 of Labor pursuant to section 16 of P.L. 1966, c. 126 (C.
2 34:15-120.7).

3 b. The Commissioner of Labor is charged with the
4 conservation of the assets of the "uninsured employer's fund."
5 Notwithstanding the provisions of any other section of this act,
6 no payments shall be made from the [uninsured employers'] fund
7 except upon application to and approval by the [Commissioner of
8 Labor and Industry] commissioner. Review of any decision by the
9 commissioner shall be in accordance with [section] R.S. 34:15-66
10 [of the Revised Statutes].

11 c. The Commissioner of Labor shall have the authority to
12 establish rules for the review of claims against the "uninsured
13 employer's fund" and hire and reimburse medical and other
14 expert witnesses that are necessary to a proper conservation and
15 defense of the moneys in the fund.

16 d. Upon being notified by the Commissioner of Labor that a
17 decision of the commissioner regarding claims against the
18 "uninsured employer's fund" is being appealed pursuant to R.S.
19 34:15-66, the Attorney General, or his designee, shall defend the
20 fund.

21 e. The Commissioner of Labor may also employ such
22 employees as may be required to maintain and conserve the
23 "uninsured employer's fund," and may also employ legal counsel
24 to represent the fund and conduct investigations on behalf of the
25 fund.

26 [In no event, however, shall any payments be made from the
27 fund until the total amount therein exceeds \$100,000.00, and
28 thereafter only to the extent of the amount in the fund exceeding
29 \$100,000.00, and, in any case, only for injuries and deaths
30 resulting therefrom occurring after the fund reaches \$100,000.00.]
31 (cf: P.L. 1966, c. 126, s. 13)

32 4. Section 15 of P.L. 1966, c. 126 (C. 34:15-120.6) is amended
33 to read as follows:

34 15. The commissioner shall annually submit an accounting of
35 the "uninsured employer's fund" to the State Treasurer and to
36 the appropriations and labor committees of both houses of the
37 State Legislature. The report to the Legislature shall include the
38 following information: an estimate of the total amount of
39 benefits paid from the fund in the preceding calendar year; an

1 estimate of the total amount of benefits paid from the fund in
 2 the preceding calendar year; an estimate of the benefits that may
 3 be paid from the fund in the current calendar year; a
 4 determination of the average cost to employers in the State, on a
 5 per employee basis, of providing benefits through the "uninsured
 6 employer's fund;" and a determination of the amount of money
 7 drawn from the fund during the preceding calendar year for
 8 administrative purposes pursuant to section 8 of P.L. , c.
 9 (C.) (now pending before the Legislature as the bill).
 10 Payments to applicants from [said] the fund shall be made by the
 11 State Treasurer upon warrants of the Commissioner of Labor [and
 12 Industry].

13 (cf: P.L. 1966, c. 126, s. 15)

14 5. Section 16 of P.L. 1966, c. 126 (C. 34:15-120.7) is amended
 15 to read as follows:

16 16. The commissioner may make all [necessary] rules and
 17 regulations necessary for the processing and payment of
 18 compensation out of the "uninsured [employers] employer's fund."

19 The commissioner shall promulgate, in accordance with the
 20 "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1
 21 et seq.), regulations to establish and administer an application
 22 and review process for claims made against the fund.

23 (cf: P.L. 1966, c. 126, s. 16)

24 6. Section 17 of P.L. 1966, c. 126 (C. 34:15-120.8) is amended
 25 to read as follows:

26 17. The liability of the "uninsured [employers'] employer's
 27 fund" and the State with respect to payment of any
 28 compensation, benefits, expenses, fees for disbursements properly
 29 chargeable against the fund shall be limited to the assets in the
 30 fund as exceed [\$100,000.00] \$50,000.00, and the fund and the
 31 State shall not otherwise in any way or manner be liable for the
 32 making of any such payment.

33 (cf: P.L. 1966, c. 126, s. 17)

34 7. (New section) If an employer fails to provide compensation
 35 to an employee or his beneficiaries as required by chapter 15 of
 36 Title 34 of the Revised Statutes, the employee, who has sustained
 37 a compensable injury or died as a result of his employment, or his
 38 beneficiaries may bring an action against the employer to recover
 39 all or part of any damages and costs sustained by the employee

1 for any injury or death which has been deemed compensable under
the workers' compensation law, R.S. 34:15-1 et seq., and for
3 which the employee or his estate has not received compensation
from the "uninsured employer's fund."

5 8. (New section) In any fiscal year during which benefit
payments are made from the "uninsured employer's fund," the
7 Commissioner of Labor shall apply an amount equal to \$100.00
for each employee to whom such benefits have been paid from
9 the fund toward the expenses of the Department of Labor arising
from the administration of those benefit payments and the fund.
11 However, the total amount withdrawn from the fund to cover
administrative expenses shall not exceed \$10,000.00 during any
13 fiscal year.

15 9. (New section) Notwithstanding the provisions of any other
law, the Division of Workers' Compensation shall use every
available administrative means to ensure that benefit payments
17 from the "uninsured employer's fund" are paid only to individuals
who meet the eligibility requirements of the workers'
19 compensation law, R.S. 34:15-1 et seq., and that persons who are
required to make payments pursuant to the workers'
21 compensation law have provided lawful compensation and paid
any penalty, fine, or assessment imposed pursuant to that law.

23 10. (New section) The burden shall be upon the claimant to
immediately notify in writing the Director of the Division of
25 Workers' Compensation of any increase or decrease in his income
that may affect his eligibility for benefits payable from the
27 "uninsured employer's fund." 10 days after notice has been given
to the claimant and the Attorney General, the director may
29 modify or terminate an award payable from the fund as
conditions may require. Any payment to a claimant pursuant to
31 this 1988 amendatory and supplementary act which is later
determined by the Commissioner of Labor to have been procured
33 by fraud, mistake, or an unreported change in condition, shall be
recovered from the claimant and deposited in the fund.

35 11. (New section) The Commissioner of Labor shall, on behalf
of the "uninsured employer's fund," exhaust all remedies at law
37 against the uninsured delinquent employer of the claimant to
collect the amount of any award to the claimant paid by the fund.

1 12. (New section) Nothing in this act, P.L. , c. (C.)
 2 (now pending before the Legislature as this bill), shall affect the
 3 obligations of insurance carriers or self-insured employers
 4 imposed by any other section of the workers' compensation law.
 5 R.S. 34:15-1 et seq.

6 13. R.S. 34:15-79 is amended to read as follows:

7 34:15-79. An employer who [shall fail] willfully fails to provide
 8 the protection prescribed in this article shall be guilty of a
 9 [misdemeanor and upon conviction thereof shall be punished by a
 10 fine of not more than \$1,000.00 or by imprisonment for not more
 11 than 60 days or by both such fine and imprisonment, and in] crime
 12 of the fourth degree. In cases where a [workmen's] workers'
 13 compensation award in the Division of [Workmen's] Workers'
 14 Compensation of New Jersey against the defendant is paid at the
 15 time of the sentence, the court may suspend sentence upon [such]
 16 that defendant and place him on probation for any period with an
 17 order to pay [said] the delinquent compensation award to the
 18 claimant through the probation office of the county. Where the
 19 employer is a corporation, the president, secretary, and the
 20 treasurer thereof who are actively engaged in the corporate
 21 business shall be liable for failure to secure the protection
 22 prescribed by this article. Any contractor placing work with a
 23 subcontractor shall, in the event of the subcontractor's failing to
 24 carry [workmen's] workers' compensation insurance as required
 25 by this article, become liable for any compensation which may be
 26 due an employee or the dependents of a deceased employee of a
 27 subcontractor. The contractor shall then have a right of action
 28 against the subcontractor for reimbursement.

29 All fines collected under the terms of this [clause] section shall
 30 be paid to the State Treasurer and credited on the records of the
 31 State Comptroller to the account of the [Rehabilitation
 32 Commission for Physically Handicapped Persons] Division of
 33 Vocational Rehabilitation Services in the Department of Labor,
 34 to be used in carrying out the provisions of [chapter 16 of this
 35 Title 34:16-1, et seq.] P.L. 1955, c. 64 (C. 34:16-20 et seq.).

36 The [director] Director of the Division of Workers'
 37 Compensation, or any officer or employee of the division
 38 designated by him, upon finding that an employer has failed for a
 39 period of not less than 10 consecutive days to make the provisions

1 for payment of compensation required by [sections] R.S. 34:15-71
2 and R.S. 34:15-72 [of this Title], may impose upon [such] that
3 employer, in addition to all other penalties, fines or assessments
4 provided for in chapter 15 of Title 34 of the Revised Statutes or
5 in any supplement thereto, an assessment in the amount of
6 [\$25.00] \$1,000.00 and when [such] the period exceeds 20 days, an
7 additional assessment of [\$25.00] \$1,000.00 for each period of 10
8 days thereafter[, but no employer shall be assessed more than
9 \$100.00 at any one time]. All assessments under this act shall be
10 collectible in a court of competent jurisdiction in a summary civil
11 proceeding and shall be paid into the "uninsured [employers']
12 employer's fund."

13 (cf: P.L. 1966, c. 126, s. 8)

14 14. This act shall take effect immediately but shall remain
15 inoperative until the enactment into law of Assembly Bill No.
16 2210 of 1988, and shall apply only to compensable injuries or
17 deaths occurring on or after the operative date of this act.

19

LABOR AND EMPLOYMENT

21

Workers' Compensation

23 Revitalizes the "uninsured employer's fund" for workers'
compensation.

[CORRECTED COPY]

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 1784

STATE OF NEW JERSEY

ADOPTED FEBRUARY 1, 1988

Sponsored by Assemblymen CHARLES and FOY

1 AN ACT concerning the "uninsured employer's fund," amending
2 R.S. 34:15-79, and amending and supplementing P.L. 1966, c.
3 126.

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

7 1. Section 10 of P.L. 1966, c. 126 (C. 34:15-120.1) is amended
to read as follows:

9 10. a. There is hereby created a fund which shall be known as
the "uninsured employer's fund" to provide for the payment of
11 awards against uninsured defaulting employers who fail to provide
compensation to employees or their beneficiaries in accordance
13 with the provisions of [this act] the workers' compensation law,
R.S. 34:15-1 et seq.

15 The fund shall be administered, maintained, and disbursed by
the Commissioner of Labor as hereinafter provided.

17 b. (1) For the purpose of establishing and maintaining this
fund, the Commissioner of Labor shall impose on January 1, 1989
19 and on the first day of each year thereafter, except as provided
below, an annual surcharge upon each workers' compensation
21 policyholder and employer's liability insurance policyholder and
each self-insured employer insured pursuant to R.S. 34:15-77.
23 Each workers' compensation and employer's liability insurance
policyholder and self-insured employer shall be liable for
25 payment of the annual surcharge in accordance with the
provisions of this section and all regulations promulgated
27 pursuant thereto. The annual surcharge imposed under this
section shall apply to all workers' compensation and employer's
29 liability insurance policies written or renewed or, in the case of
self-insured employers, to coverage provided on or after January
31 1, 1989. However, the surcharge shall not apply: to any

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 reinsurance or retrocessional transaction; to the State or any
2 political subdivision thereof which acts as a self-insured
3 employer; or to any workers' compensation endorsement required
4 pursuant to section 1 of P.L. 1979, c. 380 (C. 17:36-5.29).

5 If the Commissioner of Labor determines, pursuant to
6 paragraph (2) of this subsection b., that the "uninsured
7 employer's fund" will have to its credit a sum in excess of
8 \$500,000.00 at the end of any calendar year, the annual surcharge
9 shall be suspended for the next following year and its collection
10 not resumed until the calendar year immediately following any
11 calendar year in which the balance in the fund is reduced below
12 \$500,000.00.

13 (2) For the calendar year 1989, the total amount of the
14 surcharge levied by the commissioner shall be \$500,000.00. On
15 September 1 of 1989 and of each year thereafter, the
16 Commissioner of Labor shall estimate the amount of benefits
17 that have been paid and will be paid from the "uninsured
18 employer's fund" during that calendar year, and shall calculate in
19 consultation with the Commissioner of Insurance, the total
20 amount of the annual surcharge for the "uninsured employer's
21 fund" to be levied during the next following calendar year upon
22 all workers' compensation and employer's liability insurance
23 policyholders and self-insured employers pursuant to paragraph
24 (1) of this subsection b. The total amount of the annual surcharge
25 shall equal 150% of the moneys estimated by the Commissioner
26 of Labor to be payable from the "uninsured employer's fund"
27 during the calendar year preceding the year during which the
28 annual surcharge will be imposed.

29 (3) The total amount of the annual surcharge calculated
30 pursuant to paragraph (2) of this subsection b. shall be added to
31 the aggregate annual surcharge amount to be levied upon and
32 apportioned among all workers' compensation and employer's
33 liability policyholders and self-insured employers pursuant to R.S.
34 34:15-94, and be levied and apportioned in the same manner as
35 the annual surcharge for the Second Injury Fund as provided in
36 R.S. 34:15-94. The surcharge to be collected from policyholders
37 and self-insured employers pursuant to this section shall,

1 however, be stated separately on the policy or billing statement
2 and the amount of the surcharge as applied pursuant to this
3 section shall not be subject to reduction for special adjustment
4 and supplemental benefits paid or payable under the workers'
5 compensation law, R.S. 34:15-1 et seq.

6 (4) As used in this subsection, "policyholder" means a holder of
7 a workers' compensation and employer's liability insurance
8 policy insured by an insurer that is a domestic, foreign or alien
9 mutual association or stock company writing workers'
10 compensation or employer's liability insurance on risks located in
11 this State and subject to premium taxes pursuant to P.L. 1945, c.
12 132 (C. 54:18A-1). "Self-insured employer" means an employer
13 which self-insures for workers' compensation or employer's
14 liability insurance pursuant to the provisions of R.S. 34:15-77.

15 (5) All moneys collected pursuant to this section shall be
16 deposited in the "uninsured employer's fund." Collection of the
17 annual surcharge shall be under the authority of the
18 Commissioner of Labor as defined in R.S. 34:15-94.

19 c. [the director] The Director of the Division of Workers'
20 Compensation upon rendering a decision with respect to any
21 claim for compensation under chapter 15 of Title 34 of the
22 Revised Statutes that the employer liable therefor has failed to
23 secure the payment of compensation with respect [thereto] to a
24 claim in accordance with [section] R.S. 34:15-71 or [section] R.S.
25 34:15-72 [of the Revised Statutes], shall impose [an assessment in
26 the sum] a penalty of [\$150.00] \$1,000.00 against the employer
27 and direct its payment into the "uninsured employer's fund" in
28 connection with each such claim. The director shall also impose
29 an additional assessment of 15% of the award or awards made in
30 each [such] claim[,such additional assessment not to]. This
31 additional assessment shall not exceed, however, the sum of
32 [\$1,500.00] \$5,000.00 in any one claim, and shall [direct that such
33 additional assessment also] be paid into the "uninsured
34 employer's fund."

35 If the employer [shall fail] fails to pay these assessments into
36 the fund within 10 days after date of mailing of notice thereof to
37 him, [such default] this shall constitute a default in payment of
compensation due pursuant to the provisions of [section 40 of

1 this] the workers' compensation law, R.S. 34:15-1 et seq., and
 judgment therefor shall be entered in accordance therewith[, all
 3 other provisions of said section to be deemed applicable with
 respect thereto, except to the extent that said provisions may be
 5 clearly inconsistent with the provisions of this section].

All sums collected from an uninsured defaulting employer with
 7 respect to any claim for compensation referred to in this section
 but not payable from the fund, whether such collection is made
 9 prior or subsequent to entry of judgment against [such] the
 employer, shall be deemed in payment of and applicable first in
 11 satisfaction of any compensation and benefits due from [such] the
 employer with respect to [such] the claim and security demand, if
 13 any, in connection therewith and only when [such] the obligations
 are satisfied in full shall the balance of said sums collected, if
 15 any, be deemed payment in satisfaction of and applicable to the
 assessments above prescribed in this section.

17 All sums recovered from uninsured defaulting employers on
 judgments entered for failure to pay assessments as hereinafter
 19 provided and for failure to pay compensation and benefits which
 were paid from the [fund herein created,] "uninsured employer's
 21 fund," shall upon [such] recovery be paid into [said] that fund.
 (cf: P.L. 1966, c. 126, s. 10).

23 2. Section 11 of P.L. 1966, c. 126 (C. 34:15-120.2) is amended
 to read as follows:

25 11. a. In any case in which a claim for compensation is filed
 pursuant to the provisions of [chapter 15 of Title 34 of the
 27 Revised Statutes] the workers' compensation law, R.S. 34:15-1 et
seq., and the employer has failed to secure the payment of
 29 compensation as required by [section] R.S. 34:15-71 or [section]
R.S. 34:15-72 [of the Revised statutes] and to make payment of
 31 compensation according to the terms of any award within 45 days
 thereafter and fails or refuses to deposit with the director within
 33 10 days after demand the commuted or estimated value of the
 compensation payable under the award as security for prompt and
 35 convenient payment of [such] compensation periodically as it
 accrues, then [and in such event], unless a notice of appeal has
 37 been timely filed, the award shall be payable out of the
 "uninsured [employers' fund," but no extra compensation or
 39 death benefit pursuant to section 34:15-10 shall be payable from
 the] employer's fund."

1 b. Benefit payments from the "uninsured employer's fund"
may include:

3 (1) Compensation for reasonable medical expenses covered by
the workers' compensation law, R.S. 34:15-1 et seq.; and

5 (2) Compensation for temporary disability as provided in
subsection a. of R.S. 34:15-12.

7 c. Benefit payments from the "uninsured employer's fund"
shall not include:

9 (1) Any compensation not included in the award or judgment
upon which a claim against the fund is made;

11 (2) Extra compensation or death benefits pursuant to R.S.
34:15-10.

13 d. Temporary disability benefits paid from the "uninsured
employers fund" shall be offset or reduced by an amount equal to
the amount of disability benefits received by the claimant
pursuant to the federal "Old-Age, Survivors' and Disability
Insurance Act" (42 U.S.C. § 401 et al.).

15 e. Benefits shall be paid to a claimant from the "uninsured
employer's fund" only if the claimant: (1) was, at the time of the
injury or death, an employee performing service for an employer
outside of casual employment as defined in R.S. 34:15-36; and (2)
did not recover full compensation for reasonable medical
expenses and temporary disability benefits from the uninsured
defaulting employer.

25 (cf: P.L. 1966, c. 126, s. 11)

27 3. Section 13 of P.L. 1966, c. 126 (C. 34:15-120.4) is amended
to read as follows:

29 a. After an award has been entered against an employer for
compensation under any provision of the workers' compensation
law, R.S. 34:15-1 et seq., and the Director of the Division of
Workers' Compensation has filed an order for payment of
compensation and assessments with the Clerk of the Superior
Court pursuant to section 12 of P.L. 1966, c. 126 (C. 34:15-120.3)
as a result of the employer's failure to provide lawful
compensation, the claimant may apply to the Commissioner of
Labor for compensation from the "uninsured employer's fund" in
accordance with the procedures established by the Commissioner
of Labor pursuant to section 16 of P.L. 1966, c. 126 (C.
34:15-120.7).

1 b. The Commissioner of Labor is charged with the
 2 conservation of the assets of the "uninsured employer's fund."
 3 Notwithstanding the provisions of any other section of this act,
 4 no payments shall be made from the [uninsured employers'] fund
 5 except upon application to and approval by the [Commissioner of
 6 Labor and Industry] commissioner. Review of any decision by the
 7 commissioner shall be in accordance with [section] R.S. 34:15-66
 8 [of the Revised Statutes].

9 c. The Commissioner of Labor shall have the authority to
 10 establish rules for the review of claims against the "uninsured
 11 employer's fund" and hire and reimburse medical and other
 12 expert witnesses that are necessary to a proper conservation and
 13 defense of the moneys in the fund.

14 d. Upon being notified by the Commissioner of Labor that a
 15 decision of the commissioner regarding claims against the
 16 "uninsured employer's fund" is being appealed pursuant to R.S.
 17 34:15-66, the Attorney General, or his designee, shall defend the
 18 fund.

19 e. The Commissioner of Labor may also employ such
 20 employees as may be required to maintain and conserve the
 21 "uninsured employer's fund," and may also employ legal counsel
 22 to represent the fund and conduct investigations on behalf of the
 23 fund.

24 [In no event, however, shall any payments be made from the
 25 fund until the total amount therein exceeds \$100,000.00, and
 26 thereafter only to the extent of the amount in the fund exceeding
 27 \$100,000.00, and, in any case, only for injuries and deaths
 28 resulting therefrom occurring after the fund reaches \$100,000.00.]
 29 (cf: P.L. 1966, c. 126, s. 13)

30 4. Section 15 of P.L. 1966, c. 126 (C. 34:15-120.6) is amended
 31 to read as follows:

32 15. The commissioner shall annually submit an accounting of
 33 the "uninsured employer's fund" to the State Treasurer and to
 34 the appropriations and labor committees of both houses of the
 35 State Legislature. The report to the Legislature shall include the
 36 following information: an estimate of the total amount of
 37 benefits paid from the fund in the preceding calendar year; an
 38 estimate of the benefits that may be paid from the fund in the
 39 current calendar year; a determination of the average cost to
 40 employers in the State, on a per employee basis, of providing

1 benefits through the "uninsured employer's fund;" and a
2 determination of the amount of money drawn from the fund
3 during the preceding calendar year for administrative purposes
4 pursuant to section 8 of P.L. , c. (C.) (now pending before
5 the Legislature as the bill). Payments to applicants from [said]
6 the fund shall be made by the State Treasurer upon warrants of
7 the Commissioner of Labor [and Industry].

(cf: P.L. 1966, c. 126, s. 15)

9 5. Section 16 of P.L. 1966, c. 126 (C. 34:15-120.7) is amended
10 to read as follows:

11 16. The commissioner may make all [necessary] rules and
12 regulations necessary for the processing and payment of
13 compensation out of the "uninsured [employers'] employer's
14 fund."

15 The commissioner shall promulgate, in accordance with the
16 "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1
17 et seq.), regulations to establish and administer an application
18 and review process for claims made against the fund.

19 (cf: P.L. 1966, c. 126, s. 16)

20 6. Section 17 of P.L. 1966, c. 126 (C. 34:15-120.8) is amended
21 to read as follows:

22 17. The liability of the "uninsured [employers'] employer's
23 fund" and the State with respect to payment of any
24 compensation, benefits, expenses, fees for disbursements properly
25 chargeable against the fund shall be limited to the assets in the
26 fund as exceed [\$100,000.00] \$50,000.00, and the fund and the
27 State shall not otherwise in any way or manner be liable for the
28 making of any such payment.

29 (cf: P.L. 1966, c. 126, s. 17)

30 7. (New section) If an employer fails to provide compensation
31 to an employee or his beneficiaries as required by chapter 15 of
32 Title 34 of the Revised Statutes, the employee, who has sustained
33 a compensable injury or died as a result of his employment, or his
34 beneficiaries may bring an action against the employer to recover
35 all or part of any damages and costs sustained by the employee
36 for any injury or death which has been deemed compensable under
37 the workers' compensation law, R.S. 34:15-1 et seq., and for
38 which the employee or his estate has not received compensation
39 from the "uninsured employer's fund."

1 8. (New section) In any fiscal year during which benefit
2 payments are made from the "uninsured employer's fund," the
3 Commissioner of Labor shall apply an amount equal to \$100.00
4 for each employee to whom such benefits have been paid from
5 the fund toward the expenses of the Department of Labor arising
6 from the administration of those benefit payments and the fund.
7 However, the total amount withdrawn from the fund to cover
8 administrative expenses shall not exceed \$10,000.00 during any
9 fiscal year.

10 9. (New section) Notwithstanding the provisions of any other
11 law, the Division of Workers' Compensation shall use every
12 available administrative means to ensure that benefit payments
13 from the "uninsured employer's fund" are paid only to individuals
14 who meet the eligibility requirements of the workers'
15 compensation law, R.S. 34:15-1 et seq., and that persons who are
16 required to make payments pursuant to the workers'
17 compensation law have provided lawful compensation and paid
18 any penalty, fine, or assessment imposed pursuant to that law.

19 10. (New section) The burden shall be upon the claimant to
20 immediately notify in writing the Director of the Division of
21 Workers' Compensation of any increase or decrease in his income
22 that may affect his eligibility for benefits payable from the
23 "uninsured employer's fund." 10 days after notice has been given
24 to the claimant and the Attorney General, the director may
25 modify or terminate an award payable from the fund as
26 conditions may require. Any payment to a claimant pursuant to
27 this 1988 amendatory and supplementary act which is later
28 determined by the Commissioner of Labor to have been procured
29 by fraud, mistake, or an unreported change in condition, shall be
30 recovered from the claimant and deposited in the fund.

31 11. (New section) The Commissioner of Labor shall, on behalf
32 of the "uninsured employer's fund," exhaust all remedies at law
33 against the uninsured delinquent employer of the claimant to
34 collect the amount of any award to the claimant paid by the fund.

35 12. (New section) Nothing in this act, P.L. , c. (C.)
36 (now pending before the Legislature as this bill), shall affect the
37 obligations of insurance carriers or self-insured employers
38 imposed by any other section of the workers' compensation law,
39 R.S. 34:15-1 et seq.

1 13. R.S. 34:15-79 is amended to read as follows:

3 34:15-79. An employer who [shall fail] willfully fails to provide
 5 the protection prescribed in this article shall be guilty of a
 7 [misdemeanor and upon conviction thereof shall be punished by a
 9 fine of not more than \$1,000.00 or by imprisonment for not more
 11 than 60 days or by both such fine and imprisonment, and in] crime
 13 of the fourth degree. In cases where a [workmen's] workers'
 15 compensation award in the Division of [Workmen's] Workers'
 17 Compensation of New Jersey against the defendant is paid at the
 19 time of the sentence, the court may suspend sentence upon [such]
 21 that defendant and place him on probation for any period with an
 23 order to pay [said] the delinquent compensation award to the
 claimant through the probation office of the county. Where the
 employer is a corporation, the president, secretary, and the
 treasurer thereof who are actively engaged in the corporate
 business shall be liable for failure to secure the protection
 prescribed by this article. Any contractor placing work with a
 subcontractor shall, in the event of the subcontractor's failing to
 carry [workmen's] workers' compensation insurance as required
 by this article, become liable for any compensation which may be
 due an employee or the dependents of a deceased employee of a
 subcontractor. The contractor shall then have a right of action
 against the subcontractor for reimbursement.

25 All fines collected under the terms of this [clause] section shall
 27 be paid to the State Treasurer and credited on the records of the
 29 State Comptroller to the account of the [Rehabilitation
 Commission for Physically Handicapped Persons] Division of
Vocational Rehabilitation Services in the Department of Labor,
 to be used in carrying out the provisions of [chapter 16 of this
 Title 34:16-1, et seq.] P.L. 1955, c. 64 (C. 34:16-20 et seq.).

31 The [director] Director of the Division of Workers'
 33 Compensation, or any officer or employee of the division
 35 designated by him, upon finding that an employer has failed for a
 37 period of not less than 10 consecutive days to make the provisions
 for payment of compensation required by [sections] R.S. 34:15-71
 and R.S. 34:15-72 [of this Title], may impose upon [such] that
 39 employer, in addition to all other penalties, fines or assessments
 provided for in chapter 15 of Title 34 of the Revised Statutes or
 in any supplement thereto, an assessment in the amount of

1 ~~[\$25.00]~~ \$1,000.00 and when [such] the period exceeds 20 days, an
3 additional assessment of ~~[\$25.00]~~ \$1,000.00 for each period of 10
5 days thereafter[, but no employer shall be assessed more than
7 \$100.00 at any one time]. All assessments under this act shall be
collectible in a court of competent jurisdiction in a summary civil
proceeding and shall be paid into the "uninsured [employers']
employer's fund."

(cf: P.L. 1966, c. 126, s. 8)

9 14. This act shall take effect immediately but shall remain
11 inoperative until the enactment into law of Assembly Bill No.
13 2210 of 1988, and shall apply only to compensable injuries or
deaths occurring on or after the operative date of this act.

LABOR AND EMPLOYMENT

Workers' Compensation

17 Revitalizes the "uninsured employer's fund" for workers'
19 compensation.