

34:15-94

LEGISLATIVE HISTORY CHECKLIST

NJSA: 34:15-94 et al

(Second injury fund--establish new financing system)

LAWS: 1988

CHAPTER: 26

Bill No: A2210

Sponsor(s): Littell and Genova

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: February 1, 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

DO NOT WRITE IN THESE SPACES

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ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 2210**  
**STATE OF NEW JERSEY**

ADOPTED FEBRUARY 1, 1988

By Assemblymen LITTELL and GENOVA

1 AN ACT eliminating the annual Second Injury Fund assessment on  
2 insurers and self-insurers established by R.S. 34:15-94,  
3 creating an annual surcharge to be levied upon certain  
4 policyholders and self-insured employers and amending R.S.  
5 34:15-94, R.S. 34:15-95, and P.L. 1980, c. 83.

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

9 1. R.S. 34: 15-94 is amended to read as follows:

10 34:15-94. a. Each mutual association or stock company  
11 writing compensation or employer's liability insurance in this  
12 State, and each self-insurer, shall pay to the Commissioner of  
13 Labor a sum equal to that proportion of 150% of the total  
14 amount of moneys paid under R.S. 34:15-95 during the preceding  
15 calendar year, less the amount of net assets exceeding  
16 \$5,000,000.00 remaining in such fund as of December 31 of said  
17 preceding calendar year, which the total compensation payments  
18 of such mutual association, stock company or self-insurer bears  
19 to the total compensation payments made by all such mutual  
20 associations, stock companies, and self-insurers during such  
21 preceding calendar year. Such sum shall be paid by the  
22 Commissioner of Labor to the State Treasurer.

23 On or before August 1, 1986 the Commissioner of Labor shall  
24 recalculate payments due for calendar year 1986 in accordance  
25 with the formula provided above, and levy supplemental  
26 assessments to adjust for any difference due to be paid in  
27 satisfaction of obligations for calendar year 1986 giving full  
28 credit for payments previously due and paid on or before August  
29 15, 1986. Such supplemental assessments, if necessary to be

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 levied, shall be paid on or before September 15, 1986.  
2 Commencing January 1, 1987, and each calendar year  
3 thereafter, annual payments shall be calculated by the  
4 commissioner and sums due shall be paid in equal quarterly  
5 installments on or before March 15, on or before June 15, on or  
6 before September 15 and on or before December 15 of each year.

7 The assessment established in this subsection shall be  
8 terminated effective December 31, 1988.

9 b. Commencing January 1, 1989 and on the first day of each  
10 year thereafter, the Commissioner of Labor shall levy an annual  
11 surcharge upon all policyholders and self-insured employers for  
12 the purpose of providing moneys to the Second Injury Fund.  
13 Each policyholder and self-insured employer shall be liable for  
14 payment of the annual surcharge in accordance with the  
15 provisions of this section and all regulations promulgated  
16 pursuant hereto. The annual surcharge levied under this section  
17 shall be applied to all workers' compensation and employer's  
18 liability insurance policies providing coverage on or after  
19 January 1, 1989 and, in the case of self-insured employers, to  
20 coverage provided on or after January 1, 1989. Notwithstanding  
21 any law to the contrary, the surcharge levied pursuant to this  
22 section shall not apply: to any reinsurance or retrocessional  
23 transaction; to the State or any political subdivision thereof  
24 which acts as a self-insured employer; or to any workers'  
25 compensation endorsement required pursuant to section 1 of  
26 P.L. 1979, c. 380 (C. 17:36-5.29).

27 c. On or before July 31 of 1988 and of each year thereafter:

28 (1) Each insurer and self-insured employer shall submit to the  
29 Commissioner of Labor, in a form and manner prescribed by the  
30 Commissioner of Labor, a report of the total compensation  
31 payments made by the insurer or self-insured employer during  
32 the 12-month period ending on the immediately preceding June  
33 30th;

34 (2) Each insurer shall submit to the Commissioner of  
35 Insurance, in a form and manner prescribed by the Commissioner  
36 of Insurance, a report of the total earned premiums collected by  
37 the insurer on all workers' compensation or employer liability  
38 policies written on risks located in this State pursuant to the  
39 provisions of R.S. 17:17-1 et seq., during the 12-month period  
40 ending on the immediately preceding June 30th;

1       (3) The Commissioner of Labor shall estimate the amount of  
2       special adjustment and supplemental benefits payable by each  
3       insurer writing workers' compensation or employer's liability  
4       insurance in the State and by each self-insured employer  
5       pursuant to R.S. 34:15-95 during the then current fiscal year;

6       (4) The Commissioner of Labor shall establish the aggregate  
7       annual surcharge to be levied upon policyholders and  
8       self-insured employers during the next following calendar year,  
9       which shall be an amount equal to 150% of the moneys  
10       estimated by the Commissioner of Labor to be payable from the  
11       Second Injury Fund during the next following calendar year, less  
12       the estimated amount of net assets exceeding \$5,000,000.00  
13       which will remain in the Second Injury Fund on December 31st  
14       of the then current calendar year;

15       (5) The Commissioner of Labor shall apportion the aggregate  
16       annual surcharge calculated pursuant to paragraph (4) of this  
17       subsection among policyholders as a group and self-insured  
18       employers as a separate group. Policyholders shall be liable to  
19       pay that portion of the aggregate annual surcharge that is equal  
20       to the proportion that the compensation payments made by all  
21       policyholders during the 12-month period ending on the  
22       immediately preceding June 30th bear to the total compensation  
23       payments made by all policyholders and self-insured employers  
24       during the 12-month period ending on the immediately preceding  
25       June 30th. Self-insured employers shall be liable to pay that  
26       portion of the aggregate annual surcharge that is equal to the  
27       proportion that the compensation payments made by all  
28       self-insured employers during the 12-month period ending on the  
29       immediately preceding June 30th bear to the total compensation  
30       payments made by all policyholders and self-insured employers  
31       during the 12-month period ending on the immediately preceding  
32       June 30th; and

33       (6) The Commissioner of Labor shall notify the Commissioner  
34       of Insurance of the aggregate annual surcharge amount  
35       applicable to policyholders during the next following calendar  
36       year.

37       d. On or before September 15 of 1988 and of each year  
38       thereafter:

39       (1) In consultation with the Commissioner of Labor, the  
40       Commissioner of Insurance shall determine the annual  
41       policyholder surcharge rate to be applied to each workers'

1 compensation and employer's liability policy during the next  
2 following calendar year, and shall notify insurers of the annual  
3 policyholder surcharge rate to be applied to policy premiums  
4 during the next following calendar year. The annual  
5 policyholder surcharge rate shall be established as a percentage,  
6 which shall be equal to the percentage relationship that the  
7 annual surcharge amount which is applicable to all policyholders  
8 bears to the total earned premiums for workers' compensation  
9 and employer's liability coverage written on risks located in this  
10 State for the 12-month period ending on the immediately  
11 preceding June 30th.

12 (2) The Commissioner of Labor shall notify each self-insured  
13 employer of the amount of the annual surcharge applicable to  
14 that self-insured employer during the next following calendar  
15 year. The net annual surcharge for each self-insured employer  
16 shall be established as a pro rata portion of the annual surcharge  
17 applicable to all self-insured employers, which shall be  
18 chargeable to the self-insured employer in the proportion that  
19 the self-insured employer's compensation payments during the  
20 12-month period ending on the immediately preceding June 30th  
21 bear to the total compensation payments made by all  
22 self-insured employers during the 12-month period ending on the  
23 immediately preceding June 30th, less the estimated amount of  
24 special adjustment and supplemental benefits payable by that  
25 self-insured employer pursuant to R.S. 34:15-95 during the then  
26 current fiscal year.

27 e. (1) Every insurer providing workers' compensation and  
28 employer's liability insurance shall collect from each of its  
29 policyholders, on behalf of the Commissioner of Labor and in  
30 accordance with subsections b. c. and d. of this section, an  
31 amount equal to the annual policyholder surcharge rate  
32 established by the Commissioner of Insurance pursuant to  
33 subsection d. of this section, multiplied by the amount of the  
34 policyholder's premium. The surcharge to be collected from the  
35 policyholder shall be stated separately on the policy or billing  
36 statement and be collected at the same time and in the same  
37 manner that the premium or other charges for the coverage are  
38 collected. On or before the 30th day after the end of the  
39 calendar quarter commencing January 1, 1989, and on or before  
40 the 30th day following the end of each calendar quarter  
41 thereafter, each insurer shall report to the Commissioner

1 of Labor, on forms as the commissioner may require, the total  
2 amount of its workers' compensation and employer's liability  
3 insurance earned premiums for the preceding quarterly  
4 accounting period, and remit the surcharge collected from  
5 policyholders on those premiums, less special adjustment and  
6 supplemental benefits paid during the preceding calendar  
7 quarter by the insurer pursuant to the workers' compensation  
8 law, R.S. 34:15-1 et seq. No insurer or its agent shall be  
9 entitled to any portion of any surcharge imposed pursuant to this  
10 section as a fee or commission for its collection nor shall that  
11 surcharge be subject to any taxes, licenses or fees.

12 (2) On or before the 30th day after the end of each calendar  
13 quarter commencing January 1, 1989, and on or before the 30th  
14 day following the end of each calendar quarter thereafter, each  
15 self-insured employer shall remit to the Commissioner of Labor  
16 an amount equal to one-fourth of the effective net annual  
17 surcharge as established for that self-insured employer during  
18 the then current calendar year pursuant to subsection d. of this  
19 section, less special adjustment and supplemental benefits paid  
20 during the preceding calendar quarter by the self-insured  
21 employer pursuant to the workers' compensation law, R.S.  
22 34:15-1 et seq.

23 f. The Commissioner of Labor shall promulgate within 180  
24 days of the effective date of this act and in accordance with the  
25 "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1  
26 et seq.), any rules and regulations as may be necessary for the  
27 apportionment and collection of annual surcharges from  
28 policyholders and self-insured employers covered by this section.

29 g. The Commissioner of Insurance shall promulgate within  
30 180 days of the effective date of this act and in accordance with  
31 the "Administrative Procedure Act," P.L. 1968, c. 410 (C.  
32 52:14B-1 et seq.), any rules and regulations as may be necessary  
33 for the collection, and provision to the Commissioner of Labor,  
34 of information with respect to earned premiums of insurers and  
35 the establishment of the annual surcharge rate for policyholders.

36 h. For each 30-day period or part thereof during which a  
37 policyholder, self-insured employer, or insurer fails to make a  
38 payment or transfer of payment as required by this section or  
39 regulations promulgated thereto, a penalty of one-half of one  
40 percent (0.5%) of the amount of delinquent payment or transfer

1 of payment shall be assessed against the delinquent policyholder,  
2 self-insured employer or insurer. In no case of single failure,  
3 however, shall penalties assessed under this section exceed five  
4 percent (5.0%) of the amount of surcharge unpaid or  
5 untransferred. Penalties assessed under this subsection shall be  
6 collected in a civil action by a summary proceeding brought by  
7 the Commissioner of Labor pursuant to "the penalty  
8 enforcement law," N.J.S. 2A:58-1 et seq., and shall be  
9 deposited by the commissioner in the Second Injury Fund.

10 i. For each 30-day period during which an insurer or  
11 self-insured employer fails to file a report as required by this  
12 section, the Commissioner of Labor shall assess a penalty of  
13 \$100.00 against the insurer or self-insured employer and, upon  
14 collection thereof, shall deposit those monies in the "uninsured  
15 employer's fund." As a result of any single failure, however, no  
16 such penalty shall exceed a total of \$500.00. During the period  
17 of any such failure to file this report, the estimate by the  
18 Department of Labor of the amounts of such compensation  
19 payments or earned premiums shall be used for the purposes  
20 cited in the workers' compensation law, R.S. 34:15-1 et seq.

21 j. When the total amount of all [such] payments into the  
22 [fund] Second Injury Fund, together with the accumulated  
23 interest thereon, exceeds \$1,250,000.00, an amount not to  
24 exceed \$50,000.00 of such excess over \$1,250,000.00 in any one  
25 fiscal year may be applied toward the cost of administration of  
26 the Division of Workers' Compensation in the Department of  
27 Labor, when authorized and appropriated by the Legislature.

28 k. As used in this section, "policyholder" means a holder of a  
29 policy of workers' compensation or employer's liability  
30 insurance issued by an insurer. "Insurer" means a domestic,  
31 foreign or alien mutual association or stock company writing  
32 workers' compensation or employer's liability insurance on risks  
33 located in this State and subject to premium taxes pursuant to  
34 P.L. 1945, c. 132 (C. 54:18A-1 et seq.). "Self-insured employer"  
35 means an employer which self-insures for workers'  
36 compensation or employers' liability insurance pursuant to the  
37 provisions of R.S. 34:15-77.

(cf: P.L. 1986, c. 82 s. 1)

38 2. R.S. 34:15-95 is amended to read as follows:

1        34:15-95. The sums collected under [section] R.S. 34:15-94  
2 [of this Title] shall constitute a fund, to be known as the Second  
3 Injury Fund, out of which a sum shall be set aside each year by  
4 the Commissioner of Labor [and Industry] from which  
5 compensation payments in accordance with the provisions of  
6 paragraph (b) of [section] R.S. 34:15-12 [of this Title] shall be  
7 made to persons totally disabled, as a result of experiencing a  
8 subsequent permanent injury under conditions entitling such  
9 persons to compensation therefor, when such persons had  
10 previously been permanently and partially disabled from some  
11 other cause; provided, however, that, notwithstanding the time  
12 limit fixed therein, the provisions of paragraph (b) of [said  
13 section] R.S. 34:15-12 relative to extension of compensation  
14 payments beyond 400 or 450 weeks, as the case may be, shall,  
15 with respect to payments from the [fund constituted pursuant to  
16 the provisions of this section] Second Injury Fund, apply to any  
17 accident occurring since June 27, 1923, and in no case shall be  
18 less than \$5.00 per week; provided further, however, that no  
19 person shall be eligible to receive payments from [such fund] the  
20 Second Injury Fund:

21        (a) If the disability resulting from the injury caused by the  
22 person's last compensable accident in itself and irrespective of  
23 any previous condition or disability constitutes total and  
24 permanent disability within the meaning of this Title.

25        (b) (Deleted by amendment.)

26        (c) If the disease or condition existing prior to the last  
27 compensable accident is progressive and by reason of such  
28 progression subsequent to the last compensable accident renders  
29 the person totally disabled within the meaning of this Title.

30        (d) If a person who is rendered permanently partially disabled  
31 by the last compensable injury subsequently becomes  
32 permanently totally disabled by reason of progressive physical  
33 deterioration or preexisting condition or disease.

34        Nothing in the provisions of said paragraphs a., c. and d.,  
35 however, shall be construed to deny the benefits provided by this  
36 section to any person who has been previously disabled by reason  
37 of total loss of, or total and permanent loss of use of, a hand or  
38 arm or foot or leg or eye, when the total disability is due to the  
39 total loss of, or total and permanent loss of use of, two or more

1 of said major members of the body, or to any person who in  
2 successive accidents has suffered compensable injuries, each of  
3 which, severally, causes permanent partial disability, but which  
4 in conjunction result in permanent total disability. Nor shall  
5 anything in paragraphs a., c. and d., aforesaid apply to the case  
6 of any person who is now receiving or who has heretofore  
7 received payments from [such fund] the Second Injury Fund.

8 Upon the approval of an application for benefits, the  
9 compensation payable from [such fund] the Second Injury Fund  
10 shall be made from the date when the final payment of  
11 compensation by the employer is or was payable for the injury or  
12 injuries sustained in the employment wherein the employee  
13 became totally and permanently disabled; provided, that no  
14 payment from [such fund] the Second Injury Fund shall be made  
15 for any period prior to the date of filing of application  
16 therefore; provided, however, that a person who has received  
17 compensation payments from [said fund] the Second Injury Fund  
18 and who is reinstated or ordered placed on said fund shall  
19 receive payments from the date of last payment from [said fund]  
20 the Second Injury Fund, save only in the case of a person to  
21 whom payments have been made and then discontinued or  
22 suspended because of the rehabilitation of such person in  
23 accordance with the provisions of paragraph (b) of [section] R.S.  
24 34:15-12 [of this Title], or actual employment for any reason  
25 whatsoever, in which case payments from [said fund] the Second  
26 Injury Fund shall be made from the date of filing application for  
27 reinstatement. Payments to such totally disabled employees  
28 shall be made from said fund by the State Treasurer upon  
29 warrants of the Commissioner of Labor [and Industry]. This  
30 section shall be applicable to any accident occurring since June  
31 27, 1923, insofar as the eligibility of and benefits payable to  
32 such employees of this class is concerned; provided, however,  
33 that nothing contained herein shall limit or deprive those  
34 persons now receiving or who have received the benefits under  
35 this section from participating in [said fund] the Second Injury  
36 Fund. All payments from the [fund herein created] Second  
37 Injury Fund shall be made by biweekly installment payments.  
38 From the fund herein created the Commissioner of Labor [and  
39 Industry] may use in any one fiscal year a sum not to exceed the

1 sum of \$12,500.00 for the cost of administration of the fund  
 2 including personnel, printing, professional fees, and expenses  
 3 incurred by the Commissioner of Labor [and Industry] in the  
 4 prosecution of defenses in the Division of Workers'  
 5 Compensation, and of appeals and proceedings for review of  
 6 decisions on applications for benefits from [said fund] the  
 7 Second Injury Fund. No costs or counsel fee for the applicant  
 shall be allowed against the fund.

9 The Commissioner of Labor [and Industry] shall annually  
 submit an accounting of the fund to the State Treasurer.

11 All payments into the [fund established by section 34:15-95 of  
 the Revised Statutes] Second Injury Fund which may have  
 12 heretofore been made or required at any time or times are  
 13 hereby validated and confirmed, notwithstanding that at the  
 14 time of such payment or payments the fund may have equaled or  
 15 exceeded the sum of \$200,000.00.

17 (cf: P.L. 1979, c. 283 s. 17)

18 3. Section 1 of P.L. 1980, c. 83 (C. 34:15-95.4.) is amended to  
 19 read as follows:

20 1. Any employee or dependent receiving [further] weekly  
 21 benefits as provided under R.S. 34:15-95, R.S. 34:15-12(b) or  
 22 R.S. 34:15-13 at a rate applicable prior to January 1, 1980, and  
 23 whose payment is less than the maximum compensation rate in  
 effect for the year 1980, shall be entitled to receive a special  
 24 adjustment benefit payment from the [fund provided for by R.S.  
 25 34:15-94 and R.S. 34:15-95] Second Injury Fund and from those  
 26 sources as provided for by this 1980 amendatory and  
 27 supplementary act.

28 Any dependent, as defined in R.S. 34:15-13, of a person  
 29 totally disabled who dies while receiving compensation from the  
 30 [fund provided for by R.S. 34:15-94 and 34:15-95] Second Injury  
 31 Fund, shall become entitled to dependent benefits under this  
 32 chapter which are comparable to payments made to other  
 33 dependents under the [Workers' Compensation Law] workers'  
 34 compensation law, R.S. 34:15-1 et seq., on or after the effective  
 35 date of this 1980 amendatory and supplementary act.

36 All compensation payments made under this chapter to a  
 37 dependent, as defined under R.S. 34:15-13, of an individual who  
 38 dies while receiving such compensation, shall be payable only  
 39 where the compensable occupational injury or disease of the  
 40 decedent is a material contributing factor to his death.  
 41

1       The payment of these adjustment benefits shall be paid to an  
2 employee or dependent as long as the employee or dependent is  
3 eligible to receive payments under R.S. 34:15-95, R.S.  
4 34:15-12(b), R.S. 34:15-13, or this section.

5       The amount of the special adjustment benefit payment shall  
6 be such that when added to the workers' compensation rate  
7 awarded pursuant to R.S. 34:15-95, R.S. 34:15-12(b), R.S.  
8 34:15-13 or this section as a result of injury or death, the total  
9 shall bear the same percentage relationship to the 1980  
10 maximum workers' compensation rate that the worker's own  
11 compensation rate awarded as a result of the injury or death  
12 bears to the then effective maximum workers' compensation  
13 rate. The amount of the special adjustment benefit shall be  
14 payable at a rate of 35% of the adjustment during the fiscal  
15 year 1981 commencing July 1, 1980; 75% of the adjustment  
16 during the fiscal year 1982; and 100% of the adjustment during  
17 the fiscal year 1983 and thereafter. The special adjustment  
18 benefit payment provided herein shall be reduced by an amount  
19 equal to the individual's benefit payable under the Federal  
20 Old-Age, Survivors' and Disability Insurance Act (not including  
21 increases in such benefits due to any federal statutory increases  
22 after May 31, 1980), Black Lung benefits, or the employer's  
23 share of disability pension payments received from or on  
24 account of an employer. Where any person refuses to authorize  
25 the release of information concerning the amount of benefits  
26 payable under the aforementioned benefits, the division's  
27 estimate of that amount shall be deemed to be correct unless  
28 and until the actual amount is established and no adjustment  
29 shall be made for any period of time covered by any such refusal.

30       Payments of the adjustment shall be made from the [fund  
31 created under R.S. 34:15-94] Second Injury Fund in the manner  
32 hereinafter provided. The Commissioner of Labor shall make  
33 payments from [the fund] Second Injury Fund directly to the  
34 persons who are now receiving benefits under R.S. 34:15-95 and  
35 to their dependents becoming eligible for dependents' benefits  
36 under this 1980 amendatory and supplementary act by increasing  
37 or, as the case may be, setting the [weekly] biweekly  
38 compensation payments to include the [weekly] biweekly special  
39 adjustment. In the case of persons who are entitled to  
40 compensation under R.S. 34:15-12(b) or R.S. 34:15-13, the  
41 insurance carrier or self-insured employer in the second and

1 subsequent fiscal years after enactment shall increase the  
 2 weekly compensation payments to include the weekly special  
 3 adjustment [and]. For such special adjustment payments and  
 4 supplements to special adjustment payments paid during the  
 5 period July 1, 1981 and December 31, 1988, insurance carriers  
 6 and self-insured employers shall credit the payment against the  
 7 assessments payable by the insurance carrier or self-insurer  
 8 under R.S. 34:15-94. The insurance carrier or self-insurer  
 9 claiming such credit shall submit vouchers upon forms  
 10 prescribed by the Commissioner of Labor, identifying each case  
 11 and indicating the weekly benefit adjustment applicable thereto  
 on or before June 30, 1989.

13 Beginning in the fiscal year 1984 and in every fiscal year  
 14 thereafter, a supplement to the special adjustment benefit  
 15 payment shall be paid to all employees or dependents entitled to  
 16 the special adjustment benefit payment. The supplement to the  
 17 special adjustment benefit payment shall be paid in an amount,  
 18 in combination with income from all sources referred to in this  
 19 section, which bears the same percentage relationship to the  
 20 then current maximum workers' compensation rate that the  
 21 worker's own compensation rate awarded as a result of the  
 22 injury or death bears to the then effective maximum workers'  
 23 compensation rate. Beginning in fiscal year 1986 and in every  
 24 fiscal year thereafter, payment of supplements to the special  
 25 adjustment benefits shall be made from the [fund created under  
 26 R.S. 34:15-94] Second Injury Fund. Payment of supplements to  
 27 the special adjustment benefits for fiscal years 1984 and 1985  
 28 shall be from interest earned and accrued upon moneys  
 29 belonging to "the stock workers' compensation security fund"  
 30 and "the mutual workers' compensation security fund" during  
 31 fiscal years 1981 through 1985, and from special assessments  
 32 upon self-insured employers in the same proportions as provided  
 33 under R.S. 34:15-94.

(cf: P.L. 1986, c. 82 s. 2)

35 4. This act shall take effect immediately.

37

## LABOR AND EMPLOYMENT

39

### Insurance

41

Establishes new financing system for Second Injury Fund.

ASSEMBLY, No. 2210  
STATE OF NEW JERSEY

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

By Assemblymen LITTELL and GENOVA

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      on insurers and self-insurers established by R.S. 34:15-94,  
3       creating an annual surcharge to be levied upon certain  
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7       **BE IT ENACTED** *by the Senate and General Assembly of the*  
      *State of New Jersey:*

9       1. R.S. 34: 15-94 is amended to read as follows:  
      34:15-94. a. Each mutual association or stock company  
11      writing compensation or employer's liability insurance in this  
      State, and each self-insurer, shall pay to the Commissioner of  
13      Labor a sum equal to that proportion of 150% of the total  
      amount of moneys paid under R.S. 34:15-95 during the preceding  
15      calendar year, less the amount of net assets exceeding  
      \$5,000,000.00 remaining in such fund as of December 31 of said  
17      preceding calendar year, which the total compensation payments  
      of such mutual association, stock company or self-insurer bear  
19      to the total compensation payments made by all such mutual  
      associations, stock companies, and self-insurers during such  
21      preceding calendar year. Such sum shall be paid by the  
      Commissioner of Labor to the State Treasurer.

23      On or before August 1, 1986, the Commissioner of Labor shall  
      recalculate payments due for calendar year 1986 in accordance  
25      with the formula provided above, and levy supplemental  
      assessments to adjust for any difference due to be paid in  
27      satisfaction of obligations for calendar year 1986, giving full  
      credit for payments previously due and paid on or before August  
29      15, 1986. Such supplemental assessments, if necessary to be  
      levied, shall be paid on or before September 15, 1986.  
31      Commencing January 1, 1987, and each calendar year thereafter,

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 annual payments shall be calculated by the commissioner and  
2 sums due shall be paid in equal quarterly installments on or  
3 before March 15, on or before June 15, on or before September  
4 15 and on or before December 15 of each year.

5 The assessment established in this subsection shall be  
6 terminated effective December 31, 1988.

7 b. Commencing January 1, 1989 and on the first day of each  
8 year thereafter, the Commissioner of Labor shall levy an annual  
9 surcharge upon all policyholders and self-insured employers for  
10 the purpose of providing moneys to the Second Injury Fund.  
11 Each policyholder and self-insured employer shall be liable for  
12 payment of the annual surcharge in accordance with the  
13 provisions of this section and all regulations promulgated  
14 pursuant hereto. The annual surcharge levied under this section  
15 shall be applied to all workers' compensation and employer's  
16 liability insurance policies providing coverage on or after  
17 January 1, 1989 and, in the case of self-insured employers, to  
18 coverage provided on or after January 1, 1989. Notwithstanding  
19 any law to the contrary, the surcharge levied pursuant to this  
20 section shall not apply: to any reinsurance or retrocessional  
21 transaction; to the State or any political subdivision thereof  
22 which acts as a self-insured employer; or to any workers'  
23 compensation endorsement required pursuant to section 1 of  
24 P.L. 1979, c. 380 (C. 17:36-5.29).

25 c. On or before July 31 of 1988 and of each year thereafter:

26 (1) Each insurer and self-insured employer shall submit to the  
27 Commissioner of Labor, in a form and manner prescribed by the  
28 Commissioner of Labor, a report of the total compensation  
29 payments made by the insurer or self-insured employer during  
30 the 12-month period ending on the immediately preceding June  
31 30th;

32 (2) Each insurer shall submit to the Commissioner of  
33 Insurance, in a form and manner prescribed by the Commissioner  
34 of Insurance, a report of the total earned premiums collected by  
35 the insurer on all workers' compensation or employer liability  
36 policies written on risks located in this State pursuant to the  
37 provisions of R.S. 17:17-1 et seq., during the 12-month period  
ending on the immediately preceding June 30th;

1       (3) The Commissioner of Labor shall estimate the amount of  
2       special adjustment and supplemental benefits payable by each  
3       insurer writing workers' compensation or employer's liability  
4       insurance in the State and by each self-insured employer  
5       pursuant to R.S. 34:15-95 during the then current fiscal year;

6       (4) The Commissioner of Labor shall establish the aggregate  
7       annual surcharge to be levied upon policyholders and  
8       self-insured employers during the next following calendar year,  
9       which shall be an amount equal to 150% of the moneys  
10       estimated by the Commissioner of Labor to be payable from the  
11       Second Injury Fund during the next following calendar year, less  
12       the estimated amount of net assets exceeding \$5,000,000.00  
13       which will remain in the Second Injury Fund on December 31st  
14       of the then current calendar year.

15       (5) The Commissioner of Labor shall apportion the aggregate  
16       annual surcharge calculated pursuant to subparagraph (4) of this  
17       subsection among policyholders as a group and self-insured  
18       employers as a separate group. Policyholders shall be liable to  
19       pay that portion of the aggregate annual surcharge that is equal  
20       to the proportion that the compensation payments made by all  
21       policyholders during the 12-month period ending on the  
22       immediately preceding June 30th bear to the total compensation  
23       payments made by all policyholders and self-insured employers  
24       during the 12-month period ending on the immediately preceding  
25       June 30th. Self-insured employers shall be liable to pay that  
26       portion of the aggregate annual surcharge that is equal to the  
27       proportion that the compensation payments made by all  
28       self-insured employers during the 12-month period ending on the  
29       immediately preceding June 30th bear to the total compensation  
30       payments made by all policyholders and self-insured employers  
31       during the 12-month period ending on the immediately preceding  
32       June 30th; and

33       (6) The Commissioner of Labor shall notify the Commissioner  
34       of Insurance of the aggregate annual surcharge amount  
35       applicable to policyholders during the next following calendar  
36       year.

37       d. On or before September 15 of 1988 and of each year  
      thereafter:

1     (1) In consultation with the Commissioner of Labor, the  
2     Commissioner of Insurance shall determine the annual  
3     policyholder surcharge rate to be applied to each workers'  
4     compensation and employer's liability policy during the next  
5     following calendar year, and shall notify insurers of the annual  
6     policyholder surcharge rate to be applied to policy premiums  
7     during the next following calendar year. The annual  
8     policyholder surcharge rate shall be established as a percentage,  
9     which shall be equal to the percentage  
10    relationship that the annual surcharge amount which is  
11    applicable to all policyholders bears to the total earned  
12    premiums for workers' compensation and employer's liability  
13    coverage written on risks located in this State for the 12-month  
14    period ending on the immediately preceding June 30th.

15    (2) The Commissioner of Labor shall notify each self-insured  
16    employer of the amount of the annual surcharge applicable to  
17    that self-insured employer during the next following calendar  
18    year. The net annual surcharge for each self-insured employer  
19    shall be established as a pro rata portion of the annual surcharge  
20    applicable to all self-insured employers, which shall be  
21    chargeable to the self-insured employer in the proportion that  
22    the self-insured employer's compensation payments during the  
23    12-month period ending on the immediately preceding June 30th  
24    bear to the total compensation payments made by all  
25    self-insured employers during the 12-month period ending on the  
26    immediately preceding June 30th, less the estimated amount of  
27    special adjustment and supplemental benefits payable by that  
28    self-insured employer pursuant to R.S. 34:15-95 during the then  
29    current fiscal year.

30    e. (1) Every insurer providing workers' compensation and  
31    employer's liability insurance shall collect from each of its  
32    policyholders, on behalf of the Commissioner of Labor and in  
33    accordance with subsections b. c. and d. of this section, an  
34    amount equal to the annual policyholder surcharge rate  
35    established by the Commissioner of Insurance pursuant to  
36    subsection d. of this section, multiplied by the amount of the  
37    policyholder's premium. The surcharge to be collected from the  
38    policyholder shall be stated separately on the policy or billing  
39    statement and be collected at the same

1 time and in the same manner that the premium or other charges  
2 for the coverage are collected. On or before the 30th day after  
3 the end of each calendar quarter beginning January 1, 1989, and  
4 on or before the 30th day following the end of each calendar  
5 quarter thereafter, each insurer shall report to the  
6 Commissioner of Labor, on forms as the commissioner may  
7 require, the total amount of its workers' compensation and  
8 employer's liability insurance earned premiums for the  
9 preceding quarterly accounting period, and remit the surcharge  
10 collected from policyholders on those premiums, less special  
11 adjustment and supplemental benefits payable by the insurer  
12 pursuant to the workers' compensation law, R.S. 34:15-1 et  
13 seq. No insurer or its agent shall be entitled to any portion of  
14 any surcharge imposed pursuant to this section as a fee or  
15 commission for its collection nor shall that surcharge be subject  
16 to any taxes, licenses or fees.

17 (2) On or before the 30th day after the end of each calendar  
18 quarter beginning January 1, 1989, and on or before the 30th day  
19 following the end of each calendar quarter thereafter, each  
20 self-insured employer shall remit to the Commissioner of Labor  
21 an amount equal to one-fourth of the effective net annual  
22 surcharge as established for that self-insured employer during  
23 the then current calendar year pursuant to subsection d. of this  
24 section, less special adjustment and supplemental benefits  
25 payable by the self-insured employer pursuant to the workers'  
26 compensation law, R.S. 34:15-1 et seq.

27 f. The Commissioner of Labor shall promulgate within 180  
28 days of the effective date of this act and in accordance with the  
29 "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1  
30 et seq.), any rules and regulations as may be necessary for the  
31 apportionment and collection of annual surcharges from  
32 policyholders and self-insured employers covered by this section.

33 g. The Commissioner of Insurance shall promulgate within  
34 180 days of the effective date of this act and in accordance with  
35 the "Administrative Procedure Act," P.L. 1968, c. 410 (C.  
36 52:14B-1 et seq.), any rules and regulations as may be necessary  
37 for the collection, and provision to the Commissioner of Labor,  
38 of information with respect to earned premiums of insurers and  
39 the establishment of the annual surcharge rate for policyholders.

1     h. For each 30-day period or part thereof during which a  
2     policyholder, self-insured employer, or insurer fails to make a  
3     payment or transfer of payment as required by this section or  
4     regulations promulgated thereto, a penalty of one-half of one  
5     percent (0.5%) of the amount of delinquent payment or transfer  
6     of payment shall be assessed against the delinquent policyholder,  
7     self-insured employer or insurer. In no case of single failure,  
8     however, shall penalties assessed under this section exceed five  
9     percent (5.0%) of the amount of surcharge unpaid or  
10    untransferred. Penalties assessed under this subsection shall be  
11    collected in a civil action by a summary proceeding brought by  
12    the Commissioner of Labor pursuant to the "penalty  
13    enforcement law," N.J.S. 2A:58-1 et seq., and shall be  
14    deposited by the commissioner in the Second Injury Fund.

15    i. For each 30-day period during which an insurer or  
16    self-insured employer fails to file a report as required by this  
17    section, the Commissioner of Labor shall assess a penalty of  
18    \$100.00 against the insurer or self-insured employer and, upon  
19    collection thereof, shall deposit those monies in the "uninsured  
20    employer's fund." As a result of any single failure, however, no  
21    such penalty shall exceed a total of \$500.00. During the period  
22    of any such failure to file this report, the estimate by the  
23    Department of Labor of the amounts of such compensation  
24    payments or earned premiums shall be used for the purposes  
25    cited in the workers' compensation law, R.S. 34:15-1 et seq.

26    j. When the total amount of all [such] payments into the [fund]  
27    Second Injury Fund, together with the accumulated interest  
28    thereon, exceeds \$1,250,000.00, an amount not to exceed  
29    \$50,000.00 of such excess over \$1,250,000.00 in any one fiscal  
30    year may be applied toward the cost of administration of the  
31    Division of Workers' Compensation in the Department of Labor,  
32    when authorized and appropriated by the Legislature.

33    k. As used in this section, "policyholder" means a holder of a  
34    policy of workers' compensation or employer's liability  
35    insurance issued by an insurer. "Insurer" means a domestic,  
36    foreign or alien mutual association or stock company writing  
37    workers' compensation or employer's liability insurance on risks  
38    located in this State and subject to premium taxes

1 pursuant to P.L. 1945, c. 132 (C. 54:18A-1). "Self-insured  
2 employer" means an employer which self-insures for workers'  
3 compensation or employers' liability insurance pursuant to the  
4 provisions of R.S. 34:15-77.

5 2. R.S. 34:15-95 is amended to read as follows:

6 34:15-95. The sums collected under [section] R.S. 34:15-94  
7 [of this Title] shall constitute a fund, to be known as the Second  
8 Injury Fund, out of which a sum shall be set aside each year by  
9 the Commissioner of Labor [and Industry] from which  
10 compensation payments in accordance with the provisions of  
11 paragraph (b) of [section] R.S. 34:15-12 [of this Title] shall be  
12 made to persons totally disabled, as a result of experiencing a  
13 subsequent permanent injury under conditions entitling such  
14 persons to compensation therefor, when such persons had  
15 previously been permanently and partially disabled from some  
16 other cause; provided, however, that, notwithstanding the time  
17 limit fixed therein, the provisions of paragraph (b) of [said  
18 section] R.S. 34:15-12 relative to extension of compensation  
19 payments beyond 400 or 450 weeks, as the case may be, shall,  
20 with respect to payments from the [fund constituted pursuant to  
21 the provisions of this section] Second Injury Fund, apply to any  
22 accident occurring since June 27, 1923, and in no case shall be  
23 less than \$5.00 per week; provided further, however, that no  
24 person shall be eligible to receive payments from [such fund] the  
25 Second Injury Fund:

26 (a) If the disability resulting from the injury caused by his the  
27 person's last compensable accident in itself and irrespective of  
28 any previous condition or disability constitutes total and  
29 permanent disability within the meaning of this Title.

30 (b) (Deleted by amendment.)

31 (c) If the disease or condition existing prior to the last  
32 compensable accident is progressive and by reason of such  
33 progression subsequent to the last compensable accident  
34 renders the person totally disabled within the meaning of this  
35 Title.

36 (d) If a person who is rendered permanently partially disabled  
37 by the last compensable injury subsequently becomes  
38 permanently totally disabled by reason of progressive physical  
39 deterioration or preexisting condition or disease.

1        Nothing in the provisions of said paragraphs a., c. and d.,  
2        however, shall be construed to deny the benefits provided by  
3        this section to any person who has been previously disabled by  
4        reason of total loss of, or total and permanent loss of use of, a  
5        hand or arm or foot or leg or eye, when the total disability is  
6        due to the total loss of, or total and permanent loss of use of,  
7        two or more of said major members of the body, or to any  
8        person who in successive accidents has suffered compensable  
9        injuries, each of which, severally, causes permanent partial  
10       disability, but which in conjunction result in permanent total  
11       disability. Nor shall anything in paragraphs a., c. and d.,  
12       aforesaid apply to the case of any person who is now receiving  
13       or who has heretofore received payments from [such fund] the  
14       Second Injury Fund.

15       Upon the approval of an application for benefits, the  
16       compensation payable from [such fund] the Second Injury Fund  
17       shall be made from the date when the final payment of  
18       compensation by the employer is or was payable for the injury or  
19       injuries sustained in the employment wherein the employee  
20       became totally and permanently disabled; provided, that no  
21       payment from [such fund] the Second Injury Fund shall be made  
22       for any period prior to the date of filing of application  
23       therefore; provided, however, that a person who has received  
24       compensation payments from [said fund] the Second Injury Fund  
25       and who is reinstated or order placed on said fund shall receive  
26       payments from the date of last payment from [said fund] the  
27       Second Injury Fund, save only in the case of a person to whom  
28       payments have been made and then discontinued or suspended  
29       because of the rehabilitation of such person in accordance with  
30       the provisions of paragraph (b) of [section] R.S. 34:15-12 [of  
31       this Title], or actual employment for any reason whatsoever, in  
32       which case payments from [said fund] the Second Injury Fund  
33       shall be made from the date of filing application for  
34       reinstatement. Payments to such totally disabled employees  
35       shall be made from said fund by the State Treasurer upon  
36       warrants of the Commissioner of Labor and Industry. This  
37       section shall be applicable to any accident occurring since June  
38       27, 1923, insofar as the eligibility of and benefits payable to  
39       such employees of this class is concerned;

1 provided, however, that nothing contained herein shall limit or  
2 deprive those persons now receiving or who have received the  
3 benefits under this section from participating in [said fund] the  
4 Second Injury Fund. All payments from the [fund herein  
5 created] Second Injury Fund shall be made by biweekly  
6 installment payments. From the fund herein created the  
7 Commissioner of Labor [and Industry] may use in any one fiscal  
8 year a sum not to exceed the sum of \$12,500.00 for the cost of  
9 administration of the fund including personnel, printing,  
10 professional fees, and expenses incurred by the Commissioner  
11 of Labor [and Industry] in the prosecution of defenses in the  
12 Division of Workers' Compensation, and of appeals and  
13 proceedings for review of decisions on applications for benefits  
14 from [said fund] the Second Injury Fund. No costs or counsel  
15 fee for the applicant shall be allowed against the fund.

16 The Commissioner of Labor [and Industry] shall annually  
17 submit an accounting of the fund to the State Treasurer.

18 All payments into the [fund established by section 34:15-95 of  
19 the Revised Statutes] Second Injury Fund which may have  
20 heretofore been made or required at any time or times are  
21 hereby validated and confirmed, notwithstanding that at the  
22 time of such payment or payments the fund may have equaled  
23 or exceeded the sum of \$200,000.00.

24 3. Section 1 of P.L. 1980, c. 83 (C. 34:15-95.4.) is amended to  
25 read as follows:

26 1. Any employee or dependent receiving further weekly  
27 benefits as provided under R.S. 34:15-95, R.S. 34:15-12(b) or  
28 R.S. 34:15-13 at a rate applicable prior to January 1, 1980, and  
29 whose payment is less than the maximum compensation rate in  
30 effect for the year 1980 shall be entitled to receive a special  
31 adjustment benefit payment from the [fund provided for by R.S.  
32 34:15-94 and R.S. 34:15-95] Second Injury Fund and from those  
33 sources as provided for by this 1980 amendatory and  
34 supplementary act.

35 Any dependent, as defined in R.S. 34:15-13, of a person  
36 totally disabled who dies while receiving compensation from the  
37 [fund provided for by R.S. 34:15-94 and 34:15-95] Second Injury  
Fund, shall become entitled to dependent benefits under this

1 chapter which are comparable to payments made to other  
dependents under the [Workers' Compensation Law] workers'  
3 compensation law, R.S. 34:15-1 et seq., on or after the effective  
date of this 1980 amendatory and supplementary act.

5 All compensation payments made under this chapter to a  
dependent, as defined under R.S. 34:15-13, of an individual who  
7 dies while receiving such compensation, shall be payable only  
where the compensable occupational injury or disease of the  
9 decedent is a material contributing factor to his death.

The payment of these adjustment benefits shall be paid to an  
11 employee or dependent as long as the employee or dependent is  
eligible to receive payments under R.S. 34:15-95, R.S.  
13 34:15-12(b), R.S. 34:15-13, or this section.

The amount of the special adjustment benefit payment shall  
15 be such that when added to the workers' compensation rate  
awarded pursuant to R.S. 34:15-95, R.S. 34:15-12(b), R.S.  
17 34:15-13 or this section as a result of injury or death, the total  
shall bear the same percentage relationship to the 1980  
19 maximum workers' compensation rate that the worker's own  
compensation rate awarded as a result of the injury or death  
21 bears to the then effective maximum workers' compensation  
rate. The amount of the special adjustment benefit shall be  
23 payable at a rate of 35% of the adjustment during the fiscal  
year 1981 commencing July 1, 1980; 75% of the adjustment  
25 during the fiscal year 1982; and 100% of the adjustment during  
the fiscal year 1983 and thereafter. The special adjustment  
27 benefit payment provided herein shall be reduced by an amount  
equal to the individual's benefit payable under the Federal  
29 Old-Age, Survivors' and Disability Insurance Act (not including  
increases in such benefits due to any federal statutory increases  
31 after May 31, 1980), Black Lung benefits, or the employer's  
share of disability pension payments received from or on  
33 account of an employer. Where any person refuses to authorize  
the release of information concerning the amount of benefits  
35 payable under the aforementioned benefits, the division's  
estimate of that amount shall be deemed to be correct unless  
37 and until the actual amount is established and no adjustment  
shall be made for any period of time covered by any such refusal.

1        Payments of the adjustment shall be made from the [fund  
2        created under R.S. 34:15-94] Second Injury Fund in the manner  
3        hereinafter provided. The Commissioner of Labor shall make  
4        payments from [the fund] Second Injury Fund directly to the  
5        persons who are now receiving benefits under R.S. 34:15-95 and  
6        to their dependents becoming eligible for dependents' benefits  
7        under this 1980 amendatory and supplementary act by increasing  
8        or, as the case may be, setting the [weekly] biweekly  
9        compensation payments to include the [weekly] biweekly special  
10       adjustment. In the case of persons who are entitled to  
11       compensation under R.S. 34:15-12(b) or R.S. 34:15-13, the  
12       insurance carrier or self-insured employer in the second and  
13       subsequent fiscal years after enactment shall increase the  
14       weekly compensation payments to include the weekly special  
15       adjustment [and]. For such special adjustment payments and  
16       supplements to special adjustment payments payable during the  
17       period July 1, 1980 and June 30, 1987, insurance carriers and  
18       self-insured employers shall credit the payment against the  
19       assessments payable by the insurance carrier or self-insurer  
20       under R.S. 34:15-94. The insurance carrier or self-insurer  
21       claiming such credit shall submit vouchers upon forms  
22       prescribed by the Commissioner of Labor, identifying each case  
23       and indicating the weekly benefit adjustment applicable thereto.

24       Beginning in the fiscal year 1984 and in every fiscal year  
25       thereafter, a supplement to the special adjustment benefit  
26       payment shall be paid to all employees or dependents entitled to  
27       the special adjustment benefit payment. The supplement to the  
28       special adjustment benefit payment shall be paid in an amount,  
29       in combination with income from all sources referred to in this  
30       section, which bears the same percentage relationship to the  
31       then current maximum workers' compensation rate that the  
32       worker's own compensation rate awarded as a result of the  
33       injury or death bears to the then effective maximum workers'  
34       compensation rate. Beginning in fiscal year 1986 and in every  
35       fiscal year thereafter, payment of supplements to the special  
36       adjustment benefits shall be made from the [fund created under  
37       R.S. 34:15-94] Second Injury Fund. Payment of supplements to  
38       the special adjustment benefits for fiscal years 1984

1 and 1985 shall be from interest earned and accrued upon moneys  
2 belonging to "the stock workers' compensation security fund"  
3 and "the mutual workers' compensation security fund" during  
4 fiscal years 1981 through 1985, and from special assessments  
5 upon self-insured employers in the same proportions as provided  
6 under R.S. 34:15-94.

7 4. This act shall take effect immediately.

9

#### STATEMENT

11

12 This bill eliminates the Second Injury Fund assessment which  
13 is imposed annually on all insurance carriers and self-insured  
14 employers providing coverage under the State's workers'  
15 compensation law, and establishes a new financing system for  
16 the fund based on a direct annual surcharge upon all employers  
17 who are workers' compensation and employer's liability  
18 insurance policyholders or who are self-insured under the  
19 workers' compensation law, except the State and its political  
20 subdivisions.

21 To ensure that the annual surcharge collected from covered  
22 employers corresponds to the anticipated outlays of the Second  
23 Injury Fund during the following year, the bill authorizes the  
24 Commissioner of Labor to calculate the amount of the annual  
25 surcharge to be levied upon all policyholders and self-insured  
26 employers on the basis of an estimate of the amount of benefits  
27 payable from the Second Injury Fund during the next following  
28 calendar year. The aggregate annual surcharge levied on  
29 employers by the commissioner will equal 150% of the  
30 commissioner's estimate less the amount of net assets  
31 exceeding \$5,000,000.00 projected to be remaining in the Second  
32 Injury Fund on December 31 of the then current calendar year.  
33 The bill requires insurers to collect the surcharge from their  
34 policyholders, and to transfer these payments to the  
35 commissioner on a quarterly basis. The bill also requires  
36 self-insured employers to remit their surcharge directly to the  
37 commissioner on a quarterly basis.

38 Under the bill, any policyholder, self-insured employer, or  
39 insurer failing to make a lawfully required report, payment, or  
40 transfer within 30 days of the stipulated deadline would be  
41 subject to a penalty of 0.5% of the amount of the annual  
surcharge unpaid.

1        Finally, the bill specifies that the fund created pursuant to  
R.S. 34:15-95 shall be known and cited as the Second Injury Fund.

3

5

LABOR AND EMPLOYMENT

Insurance

7

Establishes new financing system for Second Injury Fund.

ASSEMBLY LABOR COMMITTEE  
STATEMENT TO  
ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 2210

STATE OF NEW JERSEY

DATED: JANUARY 28, 1988

The Assembly Labor Committee reports favorably this Assembly Committee Substitute for Assembly, No. 2210.

The substitute eliminates the Second Injury Fund assessment which is levied annually on all mutual associations, stock companies, and self-insured employers providing workers' compensation or employer's liability coverage under the workers' compensation law, R.S. 34:15-1 et seq., and establishes a new financing system for the fund. The annual surcharge levied under the new financing system is expected to generate the same level of revenue for the fund as the old annual assessment system, although it will be levied directly upon employers, including workers' compensation and employer's liability insurance policyholders and self-insureds, rather than upon insurance carriers as the current assessment system provides.

Under the new surcharge system, the Commissioner of Labor is authorized to levy, on January 1 of 1989 and of each year thereafter, a surcharge upon all employers who are workers' compensation or employer's liability insurance policyholders or who self-insure under the workers' compensation law, except the State and its political subdivisions. The total amount of the surcharge to be levied each year is to be determined by the commissioner as an amount equal to 150% of the moneys estimated by the commissioner to be payable from the Second Injury Fund during the next following calendar year, less the estimated amount of net assets exceeding \$5,000,000.00 which are expected to remain in the fund on the December 31st prior to the levy of the surcharge.

The substitute requires the commissioner to apportion the total surcharge among policyholders as a group and self-insured employers as a group in relation to the proportion of total compensation paid by each group during the 12-months preceding June 30th of the then current calendar year. Each self-insured employer is required to remit a pro rata portion of the total surcharge applicable to all self-insured employers that is equal to

the proportion that the self-insured employer's compensation payments during the 12-month period ending on the immediately preceding June 30th are of the total compensation payments made by all self-insured employers during the same period. Each policyholder is required to remit, through his insurer, an amount equal to the percentage relationship that the annual surcharge amount for all policyholders bears to the total earned premiums for all workers' compensation and employer's liability coverage written on risks located in the State for the 12-month period ending on the immediately preceding June 30th. To ensure that these complex allocation formulas do not burden employers, the substitute requires the Commissioner of Labor to notify each self-insured employer of the amount of the surcharge payable by that employer, and requires the Commissioner of Insurance to set an "annual policyholder surcharge rate" which mutual associations and stock companies can use to determine the amount of the surcharge due from each policyholder.

The substitute requires self-insured employers to remit quarterly payments of the annual surcharge levied upon them by the commissioner. Likewise, the substitute requires insurers to collect, on a quarterly basis, the annual surcharge levied on their policyholders, and to transfer these payments to the Commissioner of Labor. Any policyholder, self-insured employer, or insurer failing to make a lawfully required payment or transfer of payment is subject to a penalty of 0.5% of the amount due for each 30-day period or part thereof during which a payment or transfer is delinquent. The total amount of the penalties assessed, however, may not exceed 5.0% of the amount due if there is a single failure to make a lawfully required payment or transfer. Failure to file a report required by the substitute is punishable by a fine of \$100.00 against the insurer or employer for each 30-day period of delinquency. The total amount of the penalties assessed, however, may not exceed \$500.00 for a single failure to file a report.

The Commissioners of Labor and Insurance are authorized to issue regulations necessary to implement the provisions of the substitute.

Finally, the substitute specifies that the fund created pursuant to R.S. 34:15-95 shall be known and cited as the "Second Injury Fund."

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

**ASSEMBLY, No. 2210**

**STATE OF NEW JERSEY**

DATED: FEBRUARY 29, 1988

This bill eliminates the Second Injury Fund assessment which is levied annually on all mutual associations, stock companies, and self-insured employers providing workers' compensation or employer's liability coverage under the workers' compensation law, R.S. 34:15-1 et seq., and establishes a new financing system for the fund. The annual surcharge levied under the new financing system is expected to generate the same level of revenue for the fund as the old annual assessment system, although it will be levied directly upon employers, including workers' compensation and employer's liability insurance policyholders and self-insureds, rather than upon insurance carriers as the current assessment system provides.

Under the new surcharge system, the Commissioner of Labor is authorized to levy, on January 1 of 1989 and of each year thereafter, a surcharge upon all employers who are workers' compensation or employer's liability insurance policyholders or who self-insure under the workers' compensation law, except the State and its political subdivisions. The total amount of the surcharge to be levied each year is to be determined by the commissioner as an amount equal to 150% of the moneys estimated by the commissioner to be payable from the Second Injury Fund during the next following calendar year, less the estimated amount of net assets exceeding \$5,000,000.00 which are expected to remain in the fund on the December 31st prior to the levy of the surcharge.

The bill requires the commissioner to apportion the total surcharge among policyholders as a group and self-insured employers as a group in relation to the proportion of total compensation paid by each group during the 12 months preceding June 30th of the then current calendar year. Each self-insured employer is required to remit a pro rata portion of the total surcharge applicable to all self-insured employers that is equal to the proportion that the self-insured employer's compensation

payments during the 12-month period ending on the immediately preceding June 30th are to the total compensation payments made by all self-insured employers during the same period. Each policyholder is required to remit, through his insurer, an amount equal to the percentage relationship that the annual surcharge amount for all policyholders bears to the total earned premiums for all workers' compensation and employer's liability coverage written on risks located in the State for the 12-month period ending on the immediately preceding June 30th. To ensure that these complex allocation formulas do not burden employers, the bill requires the Commissioner of Labor to notify each self-insured employer of the amount of the surcharge payable by that employer, and requires the Commissioner of Insurance to set an "annual policyholder surcharge rate" which mutual associations and stock companies can use to determine the amount of the surcharge due from each policyholder.

The bill requires self-insured employers to remit quarterly payments of the annual surcharge levied upon them by the commissioner. Likewise, the bill requires insurers to collect, on a quarterly basis, the annual surcharge levied on their policyholders, and to transfer these payments to the Commissioner of Labor.

Any policyholder, self-insured employer, or insurer failing to make a lawfully required payment or transfer of payment is subject to a penalty of 0.5% of the amount due for each 30-day period or part thereof during which a payment or transfer is delinquent. The total amount of the penalties assessed, however, may not exceed 5.0% of the amount due if there is a single failure to make a lawfully required payment or transfer. Failure to file a report required by the bill is punishable by a fine of \$100.00 against the insurer or employer for each 30-day period of delinquency. The total amount of the penalties assessed, however, may not exceed \$500.00 for a single failure to file a report.

The Commissioners of Labor and Insurance are authorized to promulgate regulations necessary to implement the provisions of the bill.

Finally, the bill specifies that the fund created pursuant to R.S. 34:15-95 shall be known and cited as the "Second Injury Fund."